



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुक्रवार, 18 मार्च, 2011/27 फाल्गुन, 1932

हिमाचल प्रदेश सरकार

लोक निर्माण विभाग

अधिसूचना

शिमला-2, 17 मार्च, 2011

सं०:पी०बी०डब्ल्यू० (बी०)एफ०(5) 100/2010.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः उप महाल खंवागी, तहसील कल्पा, जिला किन्नौर में सीमा सड़क संगठन कैम्प पंवारी के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद् द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भू-अर्जन अधिनियम, 1894 की धारा 4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उस धारा द्वारा अपेक्षित अथवा अनुमत: अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. अत्याधिक आवश्यकता के दृष्टिगत राज्यपाल, हिमाचल प्रदेश "उक्त अधिनियम की धारा 17(4) के अधीन यह भी निर्देश देते हैं कि उक्त अधिनियम की धारा 5ए(2) के उपबन्ध इस मामले में लागू नहीं होंगे।

5. भूमि का रेंखाक का निरीक्षण कार्यालय भू-अर्जन समाहर्ता, हिमाचल प्रदेश, लोक निर्माण विभाग (दक्षिण क्षेत्र), विन्टर फिल्ड, शिमला 3 में किया जा सकता है।

विवरणी

जिला	तहसील	गांव	खसरा न०	रकबा(है० में)
किन्नौर	कल्पा	खवांगी	491	0-14-16
			1163 / 508	0-13-11
			486	0-02-88
			718	0-05-42
			742	0-05-56
			756	0-06-52
			किता: 6	0-47-65

आदेश द्वारा
हस्ताक्षरित /—
प्रधान सचिव, (लोक निर्माण)।

कार्यालय भू-व्यवस्था अधिकारी, शिमला मण्डल, शिमला-171 009

विज्ञापन नवीन भू-राजस्व तजवीज बावत नगर पालिका परिषद पाँवटासाहिब, तहसील पाँवटासाहिब,
जिला सिरमौर, हिमाचल प्रदेश।

अधिसूचना

दिनांक: 16 मार्च, 2011

नम्बर:रैव० (एस०टी०) एस०एम०एल०/ए०-न०प०पाँ०-7/06 —824-29.—1. नगर पालिका परिषद पाँवटासाहिब, तहसील पाँवटासाहिब जिला सिरमौर, हिमाचल प्रदेश में नवीन भू-राजस्व कायम करने की तजवीज है, जिसका अनुमोदन हिमाचल प्रदेश भू-राजस्व अधिनियम 1954 की धारा 53 (2) के अनुसार वित्तायुक्त (राजस्व) से उनके कार्यालय पत्र संख्या : रैव० बी.एफ.(8) 1/2001-11 दिनांक: 16-11-2010 द्वारा प्राप्त हो चुका है। नवीन तजवीज का संक्षिप्त व्योरा निम्न प्रकार से है :-

2. हाल बन्दोवस्त में जो नवीन भू-राजस्व कायम किया जाना है वह इस प्रकार है कि यदि कृष्ट रकबा नैहरी, ओवड़ अव्वल, ओवड़ दोयम, ओवड़ सोयम व खादर दोयम पर साबिक भू-राजस्व जिस रकबा पर कायम किया गया था उस पर हिमाचल प्रदेश भू-राजस्व अधिनियम 1954 की धारा 54 के अर्थानुसार ही बेशी देने पर इन किस्मों पर नवीन दरें क्रमशः नैहरी= रुपये 0.16, ओवड़ अव्वल = रुपये 0.08, आवेड़ दोयम =

रुपये 0.05 ओवड़ सोयम रुपये 0.04 व खादर दोयम= रुपये 0.06 प्रति सौ वर्गमीटर की जानी थी परन्तु हाल बन्दोवस्त में इन किस्मों पर परिवर्तन आया है व रकबा भी परिवर्तित हुआ है। इसलिए हाल बन्दोवस्त के अनुसार कृष्ट रकबा पर निम्न भू-राजस्व दरें कायम करने की प्रस्तावना है

नवीन भू-राजस्व दरें प्रतिसौ वर्गमीटर रुपये में

क्रमांक	किस्म भूमि	रकबा	भू-राजस्व दरें प्रति सौ वर्गमीटर रुपये
1	2	3	4
1.	नेहरी अव्वल	2724375—24	0.16
2.	नेहरी दोयम	114838—95	0.15
3.	चाही	236688—52	0.14
4.	सैलावी	1490.25	0.13
5.	ओवड़ अव्वल	176037—05	0.08
	जोड़	3253430—01	

3. इसके अतिरिक्त हाल बन्दोवस्त में किस्म बागीचा भी पाई गई, जिसमें साबिक बन्दोवस्त में भू-राजस्व दरें कायम नहीं की गई थीं इन किस्मों पर हाल भू-व्यवस्था में नवीन भू-राजस्व दरें कायम करने से पूर्व उनसे होने वाली आय व हाल बन्दोवस्त में नगर पंचायत सुन्नी, नगर पालिका परिषद् बिलासपुर व नगर पालिका परिषद् नालागढ़ के लिए स्वीकृत दरों को भी ध्यान में रखा गया है। तुलनात्मक दरें निम्न प्रकार से हैं:—

भू-राजस्व दरें प्रति सौ वर्गमीटर रुपये में

क्रमांक	नाम शहर	किस्म आराजी	दर रुपये
1	2	3	4
1.	नगर पंचायत सुन्नी	बागीचा बाखल अव्वल फलदार	0.38
		बागीचा बाखलअव्वल बिला फलदार	0.20
2.	नगर पालिका परिषद् बिलासपुर	बागीचा कुहली फलदार	0.10
		बागीचा बारानी फलदार	0.09
3.	नगर पालिका परिषद् नालागढ़	बागीचाकुलाहूफलदार	0.40
		बागीचा चाही फलदार	0.35
		बागीचा बारानी	0.25

4. उक्त तुलनात्मक सारणी व हाल बन्दोवस्त के समय जो उत्पादन का अनुमान किया गया उसको मध्यनज़र रखते हुए नगर पालिका परिषद् पाँवटासाहिब की किस्म बागीचा पर जो नवीन दरें प्रस्तावित हैं उनका वर्णन निम्नप्रकार से है:—

रकबा वर्गमीटरों में भू-राजस्व दरें रुपये में प्रति सौ वर्गमीटर

क्रमिक	किस्म भूमि	रकबा	भू-राजस्व दरें प्रति सौ वर्गमीटर रुपये
1	2	3	4
1.	बागीचा नेहरी अव्वल	113534-00	0.45
2.	बागीचा चाही	20322-26	0.40
3.	बागीचा ओवड़ अव्वल फलदार	42330-89	0.35
	जोड़	176187-15	—

5. अकृष्ट रकबा बंजर कदीम, वन व वनी पर प्रस्तावित भू-राजस्व दरें :—**(क) बंजर कदीम :**

रकबा बंजर पर साबिक भू-राजस्व कायम किया गया था, जिस पर हाल बन्दोवस्त में नवीन दरें कायम करने की प्रस्तावना है।

रकबा वर्गमीटरों में भू-राजस्व दरें में

क्रमिक	किस्म भूमि	रकबा	भू-राजस्व दरें प्रति सौ वर्गमीटर रुपये
1	2	3	4
1	बंजर कदीम	209896-89	0.03

(ख) रकबा वन, वनी पर प्रस्तावित भू-राजस्व दरें :

नगर पालिका परिषद पाँवटा साहिब में साबका किस्म वन व वनी कोई नहीं थी इस लिए हाल बन्दोवस्त में इस पर नवीन भू-राजस्व कायम करने से पूर्व नगर पंचायत सुन्नी के लिए हाल बन्दोवस्त में स्वीकृत दरों तथा इस नगर पालिका परिषद भूमि की उपयोगिता को ध्यान में रखते हुए निम्न दरें प्रस्तावित की जाती हैं:—

रकबा वर्ग मीटरों में भू-राजस्व दर में प्रति सौ वर्गमीटर

क्रमिक	किस्म भूमि	रकबा	भू-राजस्व दरें प्रति सौ वर्गमीटर रुपये
1	2	3	4
1.	वन	10438-04	0.04
2.	वणी	26869-68	0.03
	कुल	37307-72	

6. नगर पालिका परिषद पाँवटासाहिब में भवनों के नीचे आई भूमि और जाए सफेद आदि पर पहलीबार हिमाचल प्रदेश भू-राजस्व विशेष निर्धारण नियम 1986 के अर्थानुसार भू-राजस्व कायम किया जाना है उक्त नियम 1986 के नियम 5 के अर्थानुसार नगर पालिका परिषद पाँवटासाहिब को तीन श्रेणी/ब्लॉक में विभक्त किया गया है जो निम्न प्रकार से है:—

क्रमिक	नाम महाल / उपमहाल	श्रेणी / ब्लॉक	खसरा नम्बर
1	2	3	4
1.	उपमहाल तारुवाला	प्रथम्	1693 ता 1733, 3015 ता 3171
		द्वितीय	77 ता 721, 791 ता 1156
		तृतीय	1 ता 76, 722 ता 790, 1157 ता 1692, 1734 ता 3014
2.	उपमहाल धर्मकोट	तृतीय	सालम उपमहाल
3.	उपमहाल बदरीपुर	प्रथम्	28 ता 2209, 2240 ता 3121
		द्वितीय	1 ता 27, 2210 ता 2239
4.	उपमहाल देवीनगर	प्रथम्	सालम
5.	उपमहाल भाटावली	द्वितीय	48 ता 90, 103 ता 121, 125 ता 160, 195 ता 206, 227 ता 253, 256 ता 320, 471 ता 638, 663 ता 720
		तृतीय	1 ता 47, 91 ता 102, 122 ता 124, 161 ता 194, 207 ता 226, 254, 255, 321 ता 470, 639 ता 662, 721 ता 761
6.	उपमहाल केदारपुर	द्वितीय	14 ता 46, 55 ता 165, 168 ता 176, 180 ता 191, 249 ता 280, 324 ता 345
		तृतीय	1 ता 13, 47 ता 54, 166, 167, 177 ता 179, 192 ता 248, 281 ता 323, 346 ता 354
7.	उपमहाल भूपपुर	द्वितीय	81, 82, 85 ता 98, 113 ता 798, 870 ता 954, 962 ता 964, 966 ता 1003
		तृतीय	1 ता 80, 83, 84, 99 ता 112, 799 ता 869, 955 ता 961, 965, 1004 ता 1017
8.	उपमहाल शुभखेड़ा	प्रथम्	39 ता 174, 262 ता 273, 292 ता 940, 1061 ता 1171
		द्वितीय	1 ता 38, 175 ता 261, 274 ता 291, 941 ता 1060
9.	उपमहाल शमशेरपुर	प्रथम्	1 ता 747
		द्वितीय	748 ता 1318, 1352 ता 1395
		तृतीय	1319 ता 1351, 1396 ता 1609
10.	उपमहाल पाँवटासाहिब प्रथम्	प्रथम	सालम महाल
11.	उपमहाल पाँवटासाहिब द्वितीय	प्रथम्	1 ता 65, 74 ता 339, 365 ता 410, 529 ता 2167
		द्वितीय	66 ता 73, 340 ता 364, 411 ता 426, 431 ता 528
		तृतीय	427 ता 430, 2168 ता 2176

नगर पालिका परिषद पाँवटासाहिब में भवनों के नीचे आई भूमि पर नवीन दरें कायम करने से पूर्व मण्डलहजा में इससे पूर्व जिन नगर पंचायत व नगर पालिका परिषद में जो दरें कायम हुई हैं उनका भी ध्यान रखा गया है जो निम्नप्रकार से है :-

7. रकबा जाए सफेद व सैहन पर प्रस्तावित दरें :—

इस प्रकार के रकबा पर नवीन भू-राजस्व कायम करने से पूर्व हाल ही में सम्पन्न हुए बन्दोवस्त नगर पंचायत सुन्नी, नगर पालिका परिषद पाँवटासाहिब व नगर पालिका परिषद नालागढ़ के लिए स्वीकृत दरों का अवलोकन किया गया जो निम्न प्रकार से हैं

क्रमांक	नाम शहर	ब्लॉक / श्रेणी	जाए सफेद व सैहन के लिए स्वीकृत दरें रुपये
1	2	3	4
1.	नगर पंचायत सुन्नी	प्रथम्	7.00
		द्वितीय	6.00
		तृतीय	5.00
2.	नगर पालिका परिषद बिलासपुर	प्रथम्	8.00
		द्वितीय	7.00
		तृतीय	6.00

8. उक्त तुलना के उपरान्त नगर पालिका परिषद पाँवटासाहिब के लिए जाए सफेद व सैहन के लिए जो भू-राजस्व दरें प्रस्तावित हैं वह निम्न प्रकार से हैं :—

क्रमाँक	ब्लॉक / श्रेणी	किस्म	कुल रकबा	दर प्रति सौ वर्गमीटर रुपये
1	2	3	4	5
1	प्रथम	जाए सफेद व सैहन	479921—36	8.00
2	द्वितीय		124654—25	7.00
3	तृतीय		134941—09	6.00
	कुल रकबा		739516—70	

9. नगर पालिका परिषद पाँवटासाहिब के लिए भवन के नीचे आई भूमि पर नवीन दरें कायम करने से पूर्व मण्डलहजा में इससे पूर्व जिन नगर पंचायतों व नगर पालिका परिषद में जो दरें स्वीकृत हुई हैं उनको भी ध्यान में रखा गया है जिसका संक्षिप्त व्योरा निम्नप्रकार से है :—

क्रमांक	श्रेणी / ब्लॉक	किस्म भवन	नगर पंचायत सुन्नी रुपये	नगर पालिका परिषद बिलासपुर रुपये	नगर पालिका परिषद् नालागढ़ रुपये
1	2	3	4	5	6
1.	प्रथम्	1.मकानात	15.00	15.00	16.00
		2. दुकानात	16.00	18.00	17.00
		3. मकानात व दुकानात	15.00	—	—
		4. होटल	20.00	20.00	23.00
		5. उद्योग	22.00	20.50	24.00
		6.पैट्रोलपम्प	—	22.00	—
		7.सिनेमाघर	—	21.00	—
2.	द्वितीय	1.मकानात	13.00	14.00	15.00
		2.दुकानात	15.00	17.00	16.00
		3.मकानात व दुकानात	—	—	—
		4.होटल	22.00	19.00	—
		5. उद्योग	—	20.00	23.00
		6.पैट्रोलपम्प	—	21.00	—

		7.सिनेमाघर	—	—	—
3.	तृतीय	1.मकान	12.00	13.00	14.00
		2.दुकान	—	16.00	15.00
		3.मकानात व दुकानात	—	—	—
		4.उद्योग	—	—	22.00

नगर पालिका परिषद् पाँवटासाहिब में भवनों के नीचे आई भूमि पर नवीन भू-राजस्व दरें उक्त स्वीकृत तुलनात्मक दरों व शुद्ध किराया के मुख्य और औस्त बाजारी मूल्य की गणना व हिमाचल प्रदेश भू-राजस्व अधिनियम 1954 को ध्यान में रखते हुए नगर पालिका परिषद् पाँवटा साहिब के लिए नवीन दरें निम्न प्रकार से प्रस्तावित हैं :—

रकबा वर्गमीटरों में भू-राजस्व दरें वर्गमीटरों में—दरें (प्रति सौ वर्गमीटर) में :—

क्रमांक	श्रेणी/ब्लॉक	किस्म भवन/ईमारत	रकबा वर्गमीटरों में	भू-राजस्व दरें प्रति सौ वर्गमीटर
1	2	3	4	5
1.	प्रथम	1. मकानात	306253—09	16.00
		2. दुकानात	27298—28	18.00
		3. मकानात व दुकानात	17190—71	17.00
		4. होटल	2099—02	24.00
		5. रैस्टोरेंट	284—68	26.00
		6. उद्योग	7776—54	25.00
		7. सिनेमाघर	766—70	22.00
2.	द्वितीय	1. मकानात	57230—83	15.00
		2. दुकानात	6570—91	17.00
		3. मकानात व दुकानात	1695—92	16.00
		4. होटल	798—54	23.00
		5. उद्योग	3910—69	24.00
		6. पेट्रोलपम्प	1111—00	22.00
3.	तृतीय	1. मकानात	34681—16	14.00
		2. दुकानात	860—97	16.00
		3. मकानात व दुकानात	87—50	15.00
		4. उद्योग	3848—08	23.00
		5. पेट्रोलपम्प	1619—51	21.00
		जोड़	474084—13	—

उक्त तजवीज के अतिरिक्त अधिसूचना संख्या: 2—10/71 पंच दिनांक: 21—12—1973 तथा अन्य स्पष्टीकरण जो निदेशक पंचायती राज के पत्रनम्बर: शून्य दिनांक: 27—03—1974 के अर्थानुसार शहरी क्षेत्रों में केवल 20 प्रतिशत शुल्क लम्बरदारी (पंजोतरा) के अतिरिक्त कोई शुल्क मान्य नहीं होगा।

हिमाचल प्रदेश भू-राजस्व (विशेष) निर्धारण नियम 1986 के नियम 15 (2) के अर्थानुसार उक्त विज्ञापन जारी करके नगर पालिका परिषद् पाँवटासाहिब के भू-राजस्व अभिदाताओं को सूचित किया जाता है कि यदि किसी भू-राजस्व अभिदाताओं को उक्त तजवीज बारे कोई ऐतराज/आपत्ति या सुझाव आदि देना हो तो इस विज्ञापन की प्राप्ति के दो माह के अन्दर—अन्दर लिखित रूप में इस कार्यालय को प्रेषित करें, निश्चित अवधि के अन्दर यदि किसी प्रकार का सुझाव/ऐतराज/आपत्ति आदि प्राप्त न हों तो उक्त तजवीज को अन्तिमरूप दिया जाएगा।

आदेश द्वारा,
हस्ताक्षरित/—
भू-व्यवस्था अधिकारी,
शिमला मण्डल, शिमला—9

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 291/2001

Date of Institution : 19.11.2001

Date of decision : 29.9.2010

Sh. Yusaf s/o Sh. Abdula, Vill. Meda, P.O. Kihar, Tehsil Salooni, Distt. Chamba, H.P.

. . *Petitioner.*

Versus

1. The Divisional Officer, Forest (Forest Division, Salooni) District, Chamba, H.P.

. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the act of Divisional Forest Officer, Forest Division Salooni, Distt. Chamba, H.P. not regularizing the services of Sh. Yusaf s/o Sh. Abdula w.e.f. 01-01-1999 is proper and justified? If not, what relief the above workman is entitled to?”

2. In furtherance to the reference the petitioner has averred in the statement of claim that he was employed by the respondent as daily rated Mazdoor-cum-Chowkidar in the year 1987. He has completed more than 240 days in each calendar year since 1989. The petitioner had been rendering continuous service with the respondent for the purpose of Section 25-B of the Industrial Disputes Act and he has completed more than 10 years of continuous service with the respondent. He was thus liable to be regularized. The respondent had not followed the policy of the State and rather his services were terminated during the pendency of conciliation proceedings for which he had filed separate application under Section 33-A. The respondents have already regularized the service of other juniors people. The petitioner thus claim his regularization w.e.f. 1.1.1999.

3. The respondent while contesting the claim has averred that the petitioner was engaged in December, 1988, but he worked irregularly with the respondent till the year 2000. The month wise detail of the petitioner has been attached along with. Since the petitioner had not completed 240 days in any calendar year since 1988, he was not eligible for regularization as per the policy of the State. The respondent thus prayed for dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

5. I notice that on 24.5.2006 the following issues came to be framed by my Id. predecessor:

1. Whether the act of the respondent not to regularize the petitioner w.e.f. 1-1-1999 is tenable? ..OPP.
2. If the above issue is proved in the affirmative what benefits the petitioner is entitled to? ..OPP.
3. Relief.

6. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly yes

Issue No.2 : As per operative part of the award.

Relief. : Partly allowed as per the operative part of the award.

REASONS FOR FINDINGS

7. Both the issues are being taken up together for discussion as they are co-related and intermingled.

8. The petitioner in the reference seeks regularization w.e.f. 1-1-1999, so is the reference. During the pendency of the reference the services of the petitioner had come to be disengaged in the year 2000. He also claims reinstatement. However in the year 2006 along with other workmen even the petitioner was reengaged by the respondent and he is thereafter continuously working with the respondent. The only case set up by the respondent is that since the petitioner was irregular in attending work his service could not be regularized, as he has not completed 240 days in any calendar since the year 1988. There is no whisper in the pleadings that the petitioner had been engaged for a seasonal forestry work. The Divisional Forest Officer who has appeared as a witness (RW1) though has tried to portray that the petitioner had been employed for seasonal work and that to subject to availability of funds. The respondent has also placed on record the upto date mandays chart. The said mandays chart belies the testimony of the RW1. Even otherwise it is not the pleaded case of the respondent that the petitioner had been engaged for seasonal work. Till the year 1999 as per the mandays submitted by the respondent himself, the petitioner had completed more than 240 days in 5 years i.e. years 1990, 1996, 1997, 1998 and 1999. He had completed 231 days (as per the respondent in the year 1991). Thereupon his services were disengaged in the year 2000, along with other workmen. The petitioner remained disengaged in the year 2002-2003. Further per him the person juniors to him namely S/Sh. Singhu Ram, Mohnu Ram, Kamal Kumar, Pyaroo, Har Dayal, Uttam, Chanal, Sawaroo, Hans Raj and one Chaman had been regularized w.e.f. March 1998 who are much junior to him.

9. There is no evidence on record to rebut the said deposition of the petitioner regarding juniors having not been regularized. Having discharged the initial onus what was least expected, that the respondent would have proved on record that the aforesaid people were not junior to the petitioner and had even completed more than 240 days in all the calendar years. The services of the petitioner were discontinued for 4 years without any plausible reasons and that too during the pendency of the reference. The respondents could not have changed the services conditions of the petitioner and as such even if the 4 years are counted towards continuity and seniority the petitioner has completed more than 8 years of continuous service with 240 days in each calendar year w.e.f. 1996 to 2003. The petitioner as such was entitled for regularization in the year 2003, if not earlier.

10. Both the issues are decided accordingly in favour of the petitioner and against the respondent.

RELIEF

11. For all the aforesaid reasons discussed above the reference is partly allowed. The petitioner is thus held entitled to regularization w.e.f. 1-1-2004. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 29th day of Sept., 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 193/2009
Date of Institution : 27.2.2009
Date of decision : 2.7.2010

Shri Aatam Khan S/o Shri Sohan Khan, R/o Village Bhadyar, P.O. Barang, Tehsil Sarkaghat, Distt. Mandi,
H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Aatam Khan S/o Shri Sohan Khan by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on July, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged ..OPR
3. Whether the petition suffers from the vice of delay and laches ..OPR
4. Whether the petitioner is guilty of suppressio veri ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*".—means¹⁵

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The

authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on July, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. Authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2:

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1128/07-347, dated 21.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 29, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 319/2008
Instituted on : 13.6.2008
Decided on : 5.7.2010

Shri Amar Singh S/o Shri Narpal Ram, R/o village Kohan, P.O. Sajoopiplu, Tehsil Sarkaghat, Distt. Mandi.
H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Shri Amar Singh S/o Shri Narpat Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 1.6.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.
5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.
6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.
7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.
8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.
9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus,

to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The 31 retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment".— means³⁴

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the

Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic canons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.6.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the

workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *“that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....”* There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1725, dated 31.3.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref. No. : 44/2002

Date of Institution : 4.2.2002

Date of decision : 29.9.2010

Sh. Amar Singh s/o Sh. Nihala Ram, Village Langoi, P.O. Vihar, Tehsil Salooni, District Chamba, H.P.

..Petitioner.

Versus

2. The Divisional Officer, Forest (Forest Division, Salooni) District, Chamba, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Sh. Amar Singh S/O Sh. Nihala Ram w.e.f. Aug., 1999 by the Divisional Forest Officer, Salooni, District Chamba, H.P. without serving any notice, chargesheet and by oral orders is proper and justified? If not, what relief of service benefits i.e. backwages, seniority, compensation the above workman is entitled to?”

2. In furtherance to the reference the petitioner has averred in the statement of claim that he was employed by the respondent as Chowkidar on daily wage basis w.e.f. Dec., 1982. He continued at various places but in continuity till his termination on 1-8-1999. On the said date his services were verbly dispensed with by the Range Officer.

3. The petitioner having completed more than 240 days in each calendar Year since December, 1982, his termination was in violation of 25-F of the Industrial Disputes Act. The respondent had also not followed the principle of “Last Come First Go”, as juniors namely Gian Chand, Piar Chand, Piar Singh, Des Raj etc. had been retained by the respondent. As such the respondent had not even followed the provisions of the Section 25-G of the Industrial Disputes Act (hereinafter to be referred to as the Act). However, further per the petitioner the juniors have since been regularized.

4. It is further the case of the petitioner that since he had completed minimum of 240 days in each calendar year till December 1997, his services were liable to be regularized in the work charged cadre w.e.f. 1.1.1998. On the contrary his services were termination on 1-8-1999.

5. The petitioner thus prays for his reinstatement w.e.f. 1-8-1999, along with full back wages, seniority and all consequential benefits.

6. The respondent while contesting the claim has averred that the petitioner was engaged in the year 1984, but he worked irregularly with the respondent till the year 2001. The month wise detail of the petitioner has been attached along with. Since the petitioner had not completed 240 days in any calendar year since 1984, he was not eligible for regularization as per the policy of the State. The respondent thus prayed for dismissal of the claim.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 24.5.2006 the following issues came to be framed by my ld. predecessor:

4. Whether the act of the respondent not to regularize the petitioner w.e.f. 1-1-1996 is tenable? ..OPP.

5. If the above issue is proved in the affirmative what benefits the petitioner is entitled to?. ..OPP.

6. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly yes.

Issue No.2 : As per operative part of the award

Relief. : Partly allowed.

REASONS FOR FINDINGS

Issue no. 1 & 2 :I

10. Both the issues are being taken up together for discussion as they are co-related and intermingled.

11. The terms of reference pertains to the illegal termination of the petitioner w.e.f. August, 1999. However it transpires from the record that in the year 2006 the petitioner was reengaged by the respondent. The question of termination thus has been relegated to the back stage. Any way the issues came to be framed on 24-5-2006. The main issue which was framed was whether the action of the respondent in not regularizing the petitioner w.e.f. 1-1-1996 was legally tenable or not.

12. By now it is well settled that this Tribunal is endowed with specific jurisdiction which is circumscribed by the terms of orders of reference . In other words the jurisdiction of this Tribunal is limited, only to the issue referred to it by the appropriate Government. In the present case the reference pertains to the termination of the petitioner in August, 1999.

13. It however further transpires from the record, as is further apparent from the latest mandays chart placed on record by the respondent that the services of the petitioner were reengaged by the respondent in the year 2006. So is the undisputed testimony of the petitioner and the Divisional Forest Officer who has appeared as RW1. The respondents have reengaged the petitioner. The unilateral act of the respondent in reengaging the petitioner after his termination in the year 1999 makes the order susceptible to the vice arbitiness and illegality . It may atleast be presumed as such. The respondents have been reengaged the petitioner. The reference no doubt has died its death, but seeing to the totality of circumstances and more so the unilateral decision of the respondent it is directed that the respondent shall not give any fictional breaks to the petitioner henceforth. His services shall not dispensed with, except in accordance with law. It is however directed that the petitioner shall atleast be entitled to continuity and seniority after the year 1999, when the petitioner is alleged to have been illegally terminated. This direction has become imperative as admittedly the petitioner has been working with the respondent since 1984. Though the petitioner's case is that he has completed more than 240 days in every year where as, per the respondent the petitioner was seasonal and an erratic worker. Be it as it may, the fact remains that the respondents have themselves reengaged the petitioner even after the year 1999. It however gains significance that the other similar situated workmen are stated to have been regularized as for back as 1988. As such the case of the petitioner for regularization shall be considered after 1999, as per policy of the State. It is however held that the petitioner was not entitled to regularization as on 1-1-1996.

14. Both the issues are decided partly in favour of the petitioner and against the respondent.

RELIEF

15. For all the aforesaid reasons discussed above the reference is partly allowed in view thereof the respondents are directed not to give any fictional breaks to the petitioner henceforth his services shall not be terminated except in accordance with law. The petitioner shall, however been entitled to seniority and continuity after the year 1999. The regularization of the petitioner shall be considered from the year 1999, though as per the policy of the State. There shall be no orders as to cost. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 29th day of Sept., 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 440/2008

Instituted on : 13.6.2008

Decided on : 30.8.2010

Smt. Amari Devi W/o Shri Sant Ram, R/o Village Pipali, P.O. Darwar, Tehsil Sarkaghat, District Mandi, H.P.
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Amari Devi W/o Shri Sant Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No. 3 on 1.1.1999 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of

1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged ..OPR
3. Whether the petition suffers from the vice of delay and laches ..OPR
4. Whether the petitioner is guilty of suppressio veri ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an ‘industrial establishment’ within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus: “(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to

be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.*— For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of

the Act inter alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred “*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*” There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the

petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1957, dated 12.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 11, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 175/2009
Date of Institution : 27.2.2009
Date of decision : 2.7.2010

Shri Anil Kumar S/o Shri Basant Singh, R/o Village Anaswad, P.o. Dharwad, Tehsil Sarkaghat, Distt. Mandi,
H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Anil Kumar S/o Shri Basant Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex- Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on March, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? .. OPP
2. Whether the petition is not maintainable, as alleged ..OPR
3. Whether the petition suffers from the vice of delay and laches ..OPR
4. Whether the petitioner is guilty of suppressio veri ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of

the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.*—For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on March, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act. 26. Though a vain attempt was made by the Ld. Authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex. RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount

of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1052/07-244, dated 19.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 24, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 24/2010
Date of Institution : 26.2.2010
Date of decision : 6.10.2010

Shri Ankush S/o Shri Jagdish Chand, R/o Village Dhamandar, P.O. Laharh, Tehsil Nadaun, District Hamirpur,
H.P. ..Petitioner.

Versus

The Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mecloadganj,
Dharamshala, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.
For the Respondent : Respondent exparte.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ankush S/o Shri Jagdish Chand by Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mecloadganj, Dharamshala, District Kangra, H.P. w.e.f. 10.1.2009 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to.”

2. In furtherance to the reference, the brief case set up by the petitioner is that he had been appointed as a Bar Man on 19th August, 2007 by the respondent on regular basis and he worked as such continuously till 24.12.2008. Whereupon the petitioner came to be deputed as Assistant Bar Man and his service conditions came to be changed by the respondent in violation of the provisions of Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He worked as such with the respondent till 9.1.2009.

3. It is further the case of the petitioner that on 1.1.2009 the services of the petitioner were dispensed with verbally and without any notice as contemplated under Section 25-F of the Act. The petitioner had completed more than 240 days in the 12 months preceding his termination. The work and conduct of the petitioner was satisfactory. Since the petitioner was a Trade Unionist, being a office bearer of the Hotel Karamchari Sangh of Mcleodganj the petitioner has been harassed and victimized from time to time and eventually his services were dispensed with verbally and without resorting to the provisions of the Act. It is further averred that one Mr. L.B. Karki who was working with the petitioner as a waiter has been appointed as a Bar Man by the respondent in place of the petitioner and the conduct of the respondent is thus violative even of Section 25-H of the Act.

4. On these premises the petitioner seeks that his termination be set aside and quashed. He be ordered to be reinstated forthwith with all consequential benefits including back wages.

5. The respondent was duly served through the Manager, but even the Manager on instructions from the Managing Director refused to take service. Consequently the respondent was set exparte vide order dated 22.4.2010.

6. The petitioner in order to prove his averments has appeared as his own witness being PW1. He has reiterated the averments made in the statement of claim. He has also placed on record his wage slip Ex. PW1/C and the copy of the demand notice Ex.PW1/B.

7. The exparte evidence on record shows that the petitioner was working as a Bar Man with the respondent. Wage slip on record (Ex.PW1/C) shows that he was working even on 1.8.2007 with the respondent. The deposition of the petitioner that he continued to work till 10.1.2009 has gone un-rebutted. It can thus be conveniently said that the petitioner had completed more than 240 days in 12 months preceding his termination. The petitioner thus was liable to be terminated only after having resorted to the provisions of Section 25-F. There is nothing on record to show that the resort was had to the aforesaid provisions of law by the respondent. Per the deposition of the petitioner the respondent has even appointed one Mr. L.B. Karki as Bar Man. That being so, apparently the provisions of Section 25-H of the Act which inter alia contemplate that in case the employer proposes to take into his employment any person he shall give an opportunity to the retrenched workman to offer himself for reemployment and that the retrenched workman shall have preference over the other persons. No such endeavour seems to have been made by him. 8. It is thus to be held that the termination of the petitioner was illegal and in contravention to the provisions of Section 25-G and 25-H of the Industrial Disputes Act, as discussed hereinabove (supra). As a sequel thereto the termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be reinstated forthwith at the same place and post on which the petitioner was engaged before his illegal termination.

9. For all the aforesaid reasons the reference is allowed. The termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was unemployed during the period of his forced idleness, and as such the petitioner shall also be entitled to 50% back wages w.e.f. 10.1.2009 i.e. amounting to Rs.1950/- per month (on the basis of Rs.130/- per day as is clear from Ex.PW1/C). The reference is answered in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 6th day of October, 2010.

KR. CHIRAG BHANU SINGH
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 346/2008
Instituted on : 13.6.2008
Decided on: : 30.8.2010

Smt. Asha Devi W/o Shri Shobha Ram, R/o Village Banni, P.O. Chimahanu, Tehsil Sarkaghat, District Mandi, H.P. ..Petitioner.

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Asha Devi W/o Shri Shobha Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent no.3 on 1.1.2000 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005. 3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged ..OPR
3. Whether the petition suffers from the vice of delay and laches ..OPR
4. Whether the petitioner is guilty of suppressio veri ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (II) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (III) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such

area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful. 18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.*—For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1.1.2000. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

26. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP

No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

27. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

28. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

30. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

31. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

32. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 427/07-1792, dated April 11, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 30, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s

aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 193/2009
Date of Institution : 27.2.2009
Date of decision : 2.7.2010

Shri Aatam Khan S/o Shri Sohan Khan, R/o Village Bhadyar, P.O. Barang, Tehsil Sarkaghat, Distt. Mandi,
H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt.Mandi, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Aatam Khan S/o Shri Sohan Khan by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on July, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The 124 retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means¹²⁷

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the

meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (1) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
 - (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
 - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
 - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.*—For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on July, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646

and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. Authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1128/07-347, dated 21.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 29, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned

contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 44/2002
Date of Institution : 4.2.2002
Date of decision : 29.9.2010

Sh. Amar Singh s/o Sh. Nihala Ram, Village Langoi, P.O. Vihar, Tehsil Salooni, District Chamba, H.P.
..Petitioner

Versus

4. The Divisional Officer, Forest (Forest Division, Salooni) District, Chamba, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Sh. Amar Singh S/O Sh. Nihala Ram w.e.f. Aug., 1999 by the Divisional Forest Officer, Salooni, District Chamba, H.P. without serving any notice, chargesheet and by oral orders is proper and justified? If not , what relief of service benefits i.e. backwages, seniority, compensation the above workman is entitled to?”

2. In furtherance to the reference the petitioner has averred in the statement of claim that he was employed by the respondent as Chowkidar on daily wage basis w.e.f. Dec., 1982. He continued at various places but in continuity till his termination on 1-8-1999. On the said date his services were verbally dispensed with by the Range Officer.

5. The petitioner having completed more than 240 days in each calendar Year since December, 1982, his termination was in violation of 25-F of the Industrial Disputes Act. The respondent had also not followed the principle of "Last Come First Go", as juniors namely Gian Chand, Piar Chand, Piar Singh, Des Raj etc. had been retained by the respondent. As such the respondent had not even followed the provisions of the Section 25-G of the Industrial Disputes Act (hereinafter to be referred to as the Act). However, further per the petitioner the juniors have since been regularized.

4. It is further the case of the petitioner that since he had completed minimum of 240 days in each calendar year till December 1997, his services were liable to be regularized in the work charged cadre w.e.f. 1.1.1998. On the contrary his services were termination on 1-8-1999.

5. The petitioner thus prays for his reinstatement w.e.f. 1-8-1999, along with full back wages, seniority and all consequential benefits.

6. The respondent while contesting the claim has averred that the petitioner was engaged in the year 1984, but he worked irregularly with the respondent till the year 2001. The month wise detail of the petitioner has been attached along with. Since the petitioner had not completed 240 days in any calendar year since 1984, he was not eligible for regularization as per the policy of the State. The respondent thus prayed for dismissal of the claim.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 24.5.2006 the following issues came to be framed by my ld. predecessor:

1. Whether the act of the respondent not to regularize the petitioner w.e.f. 1-1-1996 is tenable? ..OPP.
2. If the above issue is proved in the affirmative what benefits the petitioner is entitled to? ..OPP.
3. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly yes.

Issue No.2 : As per operative part of the award

Relief. : Partly allowed.

REASONS FOR FINDINGS

Issue No. 1 & 2:

10. Both the issues are being taken up together for discussion as they are co-related and intermingled.

11. The terms of reference pertains to the illegal termination of the petitioner w.e.f. August, 1999. However it transpires from the record that in the year 2006 the petitioner was reengaged by the respondent. The question of termination thus has been relegated to the back stage. Any way the issues came to be framed on 24-5-2006. The main issue which was framed was whether the action of the respondent in not regularizing the petitioner w.e.f. 1-1-1996 was legally tenable or not.

12. By now it is well settled that this Tribunal is endowed with specific jurisdiction which is circumscribed by the terms of orders of reference. In other words the jurisdiction of this Tribunal is limited, only to the issue referred to it by the appropriate Government. In the present case the reference pertains to the termination of the petitioner in August, 1999.

13. It however further transpires from the record, as is further apparent from the latest mandays chart placed on record by the respondent that the services of the petitioner were reengaged by the respondent in the year 2006. So is the undisputed testimony of the petitioner and the Divisional Forest Officer who has appeared as RW1. The respondents have reengaged the petitioner. The unilateral act of the respondent in reengaging the petitioner after his termination in the year 1999 makes the order susceptible to the vice arbitrariness and illegality. It may at least be

presumed as such. The respondents have been reengaged the petitioner. The reference no doubt has died its death, but seeing to the totality of circumstances and more so the unilateral decision of the respondent it is directed that the respondent shall not give any fictional breaks to the petitioner henceforth. His services shall not be dispensed with, except in accordance with law. It is however directed that the petitioner shall at least be entitled to continuity and seniority after the year 1999, when the petitioner is alleged to have been illegally terminated. This direction has become imperative as admittedly the petitioner has been working with the respondent since 1984. Though the petitioner's case is that he has completed more than 240 days in every year where as, per the respondent the petitioner was seasonal and an erratic worker. Be it as it may, the fact remains that the respondents have themselves reengaged the petitioner even after the year 1999. It however gains significance that the other similar situated workmen are stated to have been regularized as for back as 1988. As such the case of the petitioner for regularization shall be considered after 1999, as per policy of the State. It is however held that the petitioner was not entitled to regularization as on 1-1-1996.

14. Both the issues are decided partly in favour of the petitioner and against the respondent.

RELIEF

15. For all the aforesaid reasons discussed above the reference is partly allowed in view thereof the respondents are directed not to give any fictional breaks to the petitioner henceforth his services shall not be terminated except in accordance with law. The petitioner shall, however be entitled to seniority and continuity after the year 1999. The regularization of the petitioner shall be considered from the year 1999, though as per the policy of the State. There shall be no orders as to cost. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 440/2008
Instituted on : 13.6.2008
Decided on : 30.8.2010

Smt. Amari Devi W/o Shri Sant Ram, R/o Village Pipali, P.O. Darwar, Tehsil Sarkaghat, District Mandi, H.P.

..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Amari Devi W/o Shri Sant Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No.3 on 1.1.1999 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The 150 retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means¹⁵³

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held

the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1957, dated 12.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 11, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief

Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH

Presiding Judge,

H.P. Industrial tribunal-Cum-

Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 175/2009

Date of Institution : 27.2.2009

Date of decision : 2.7.2010

Shri Anil Kumar S/o Shri Basant Singh, R/o Village Anaswad, P.o. Dharwad, Tehsil Sarkaghat, Distt. Mandi,
H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Anil Kumar S/o Shri Basant Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on March, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) *"industrial establishment"* means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
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- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the

meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.*— For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on March, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. Authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419. 28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1052/07-244, dated 19.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 24, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH

Presiding Judge,

H.P. Industrial tribunal-Cum-

Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 175/2009

Date of Institution : 27.2.2009

Date of decision : 2.7.2010

Shri Anil Kumar S/o Shri Basant Singh, R/o Village Anaswad, P.o. Dharwad, Tehsil Sarkaghat, Distt. Mandi,
H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Anil Kumar S/o Shri Basant Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on March, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come,

last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.
 Issue 3 : No
 Issue 4 : No
 Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful. 18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (i) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on March, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act. 26. Though a vain attempt was made by the Ld. Authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3:

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1052/07-244, dated 19.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 24, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 24/2010
Date of Institution : 26.2.2010
Date of decision : 6.10.2010

Shri Ankush S/o Shri Jagdish Chand, R/o Village Dhamandar, P.O. Laharh, Tehsil Nadaun, District Hamirpur,
H.P. *..Petitioner.*

Versus

The Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mecloadganj,
Dharamshala, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Respondent exparte.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ankush S/o Shri Jagdish Chand by Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mecloadganj, Dharamshala, District Kangra, H.P. w.e.f. 10.1.2009 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to.”

2. In furtherance to the reference, the brief case set up by the petitioner is that he had been appointed as a Bar Man on 19th August, 2007 by the respondent on regular basis and he worked as such continuously till 24.12.2008. Whereupon the petitioner came to be deputed as Assistant Bar Man and his service conditions came to be changed by the respondent in violation of the provisions of Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He worked as such with the respondent till 9.1.2009.

3. It is further the case of the petitioner that on 1.1.2009 the services of the petitioner were dispensed with verbally and without any notice as contemplated under Section 25-F of the Act. The petitioner had completed more than 240 days in the 12 months preceding his termination. The work and conduct of the petitioner was satisfactory. Since the petitioner was a Trade Unionist, being a office bearer of the Hotel Karamchari Sangh of Mcleodganj the petitioner has been harassed and victimized from time to time and eventually his services were dispensed with verbally and without resorting to the provisions of the Act. It is further averred that one Mr. L.B. Karki who was working with the petitioner as a waiter has been appointed as a Bar Man by the respondent in place of the petitioner and the conduct of the respondent is thus violative even of Section 25-H of the Act.

4. On these premises the petitioner seeks that his termination be set aside and quashed. He be ordered to be reinstated forthwith with all consequential benefits including back wages.

5. The respondent was duly served through the Manager, but even the Manager on instructions from the Managing Director refused to take service. Consequently the respondent was set *exparte* vide order dated 22.4.2010.

6. The petitioner in order to prove his averments has appeared as his own witness being PW1. He has reiterated the averments made in the statement of claim. He has also placed on record his wage slip Ex. PW1/C and the copy of the demand notice Ex.PW1/B.

7. The *exparte* evidence on record shows that the petitioner was working as a Bar Man with the respondent. Wage slip on record (Ex.PW1/C) shows that he was working even on 1.8.2007 with the respondent. The deposition of the petitioner that he continued to work till 10.1.2009 has gone un-rebutted. It can thus be conveniently said that the petitioner had completed more than 240 days in 12 months preceding his termination. The petitioner thus was liable to be terminated only after having resorted to the provisions of Section 25-F. There is nothing on record to show that the resort was had to the aforesaid provisions of law by the respondent. Per the deposition of the petitioner the respondent has even appointed one Mr. L.B. Karki as Bar Man. That being so, apparently the provisions of Section 25-H of the Act which *inter alia* contemplate that in case the employer proposes to take into his employment any person he shall give an opportunity to the retrenched workman to offer himself for reemployment and that the retrenched workman shall have preference over the other persons. No such endeavour seems to have been made by him.

8. It is thus to be held that the termination of the petitioner was illegal and in contravention to the provisions of Section 25-G and 25-H of the Industrial Disputes Act, as discussed hereinabove (*supra*). As a sequel thereto the termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be reinstated forthwith at the same place and post on which the petitioner was engaged before his illegal termination.

9. For all the aforesaid reasons the reference is allowed. The termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was unemployed during the period of his forced idleness, and as such the petitioner shall also be entitled to 50% back wages w.e.f. 10.1.2009 i.e. amounting to Rs.1950/- per month (on the basis of Rs.130/- per day as is clear from Ex.PW1/C). The reference is answered in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 6th day of October, 2010.

KR. CHIRAG BHANU SINGH
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 24/2010
Date of Institution : 26.2.2010
Date of decision : 6.10.2010

Shri Ankush S/o Shri Jagdish Chand, R/o Village Dhamandar, P.O. Laharh, Tehsil Nadaun, District Hamirpur,
H.P. *..Petitioner.*

Versus

The Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mecloadganj,
Dharamshala, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Respondent *exparte*.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ankush S/o Shri Jagdish Chand by Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mcleodganj, Dharamshala, District Kangra, H.P. w.e.f. 10.1.2009 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to.”

2. In furtherance to the reference, the brief case set up by the petitioner is that he had been appointed as a Bar Man on 19th August, 2007 by the respondent on regular basis and he worked as such continuously till 24.12.2008. Whereupon the petitioner came to be deputed as Assistant Bar Man and his service conditions came to be changed by the respondent in violation of the provisions of Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He worked as such with the respondent till 9.1.2009.

3. It is further the case of the petitioner that on 1.1.2009 the services of the petitioner were dispensed with verbally and without any notice as contemplated under Section 25-F of the Act. The petitioner had completed more than 240 days in the 12 months preceding his termination. The work and conduct of the petitioner was satisfactory. Since the petitioner was a Trade Unionist, being a office bearer of the Hotel Karamchari Sangh of Mcleodganj the petitioner has been harassed and victimized from time to time and eventually his services were dispensed with verbally and without resorting to the provisions of the Act. It is further averred that one Mr. L.B. Karki who was working with the petitioner as a waiter has been appointed as a Bar Man by the respondent in place of the petitioner and the conduct of the respondent is thus violative even of Section 25-H of the Act.

4. On these premises the petitioner seeks that his termination be set aside and quashed. He be ordered to be reinstated forthwith with all consequential benefits including back wages.

5. The respondent was duly served through the Manager, but even the Manager on instructions from the Managing Director refused to take service. Consequently the respondent was set exparte vide order dated 22.4.2010.

6. The petitioner in order to prove his averments has appeared as his own witness being PW1. He has reiterated the averments made in the statement of claim. He has also placed on record his wage slip Ex. PW1/C and the copy of the demand notice Ex.PW1/B.

7. The exparte evidence on record shows that the petitioner was working as a Bar Man with the respondent. Wage slip on record (Ex.PW1/C) shows that he was working even on 1.8.2007 with the respondent. The deposition of the petitioner that he continued to work till 10.1.2009 has gone un-rebutted. It can thus be conveniently said that the petitioner had completed more than 240 days in 12 months preceding his termination. The petitioner thus was liable to be terminated only after having resorted to the provisions of Section 25-F. There is nothing on record to show that the resort was had to the aforesaid provisions of law by the respondent. Per the deposition of the petitioner the respondent has even appointed one Mr. L.B. Karki as Bar Man. That being so, apparently the provisions of Section 25-H of the Act which inter alia contemplate that in case the employer proposes to take into his employment any person he shall give an opportunity to the retrenched workman to offer himself for reemployment and that the retrenched workman shall have preference over the other persons. No such endeavour seems to have been made by him.

8. It is thus to be held that the termination of the petitioner was illegal and in contravention to the provisions of Section 25-G and 25-H of the Industrial Disputes Act, as discussed hereinabove (supra). As a sequel thereto the termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be reinstated forthwith at the same place and post on which the petitioner was engaged before his illegal termination.

9. For all the aforesaid reasons the reference is allowed. The termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was unemployed during the period of his forced idleness, and as such the petitioner shall also be entitled to 50% back wages w.e.f. 10.1.2009 i.e. amounting to Rs.1950/- per month (on the basis of Rs.130/- per day as is clear from Ex.PW1/C). The reference is answered in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

KR. CHIRAG BHANU SINGH
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 24/2010
 Date of Institution : 26.2.2010
 Date of decision : 6.10.2010

Shri Ankush S/o Shri Jagdish Chand, R/o Village Dhamandar, P.O. Laharh, Tehsil Nadaun, District Hamirpur,
 H.P. *..Petitioner.*

Versus

The Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mecloadganj,
 Dharamshala, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.
 For the Respondent : Respondent exparte.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ankush S/o Shri Jagdish Chand by Managing Director, M/s. Surya Resorts Private Limited, Dalai Lama Temple Road, Mecloadganj, Dharamshala, District Kangra, H.P. w.e.f. 10.1.2009 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to.”

2. In furtherance to the reference, the brief case set up by the petitioner is that he had been appointed as a Bar Man on 19th August, 2007 by the respondent on regular basis and he worked as such continuously till 24.12.2008. Whereupon the petitioner came to be deputed as Assistant Bar Man and his service conditions came to be changed by the respondent in violation of the provisions of Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He worked as such with the respondent till 9.1.2009.

3. It is further the case of the petitioner that on 1.1.2009 the services of the petitioner were dispensed with verbally and without any notice as contemplated under Section 25-F of the Act. The petitioner had completed more than 240 days in the 12 months preceding his termination. The work and conduct of the petitioner was satisfactory. Since the petitioner was a Trade Unionist, being a office bearer of the Hotel Karamchari Sangh of Mcleodganj the petitioner has been harassed and victimized from time to time and eventually his services were dispensed with verbally and without resorting to the provisions of the Act. It is further averred that one Mr. L.B. Karki who was working with the petitioner as a waiter has been appointed as a Bar Man by the respondent in place of the petitioner and the conduct of the respondent is thus violative even of Section 25-H of the Act.

4. On these premises the petitioner seeks that his termination be set aside and quashed. He be ordered to be reinstated forthwith with all consequential benefits including back wages. 5. The respondent was duly served through the Manager, but even the Manager on instructions from the Managing Director refused to take service. Consequently the respondent was set exparte vide order dated 22.4.2010.

6. The petitioner in order to prove his averments has appeared as his own witness being PW1. He has reiterated the averments made in the statement of claim. He has also placed on record his wage slip Ex. PW1/C and the copy of the demand notice Ex.PW1/B.

7. The exparte evidence on record shows that the petitioner was working as a Bar Man with the respondent. Wage slip on record (Ex.PW1/C) shows that he was working even on 1.8.2007 with the respondent. The deposition of the petitioner that he continued to work till 10.1.2009 has gone un-rebutted. It can thus be conveniently said that the petitioner had completed more than 240 218 days in 12 months preceding his termination. The petitioner thus was liable to be terminated only after having resorted to the provisions of Section 25-F. There is nothing on record to show that the resort was had to the aforesaid provisions of law by the respondent. Per the deposition of the petitioner the respondent has even appointed one Mr. L.B. Karki as Bar Man. That being so, apparently the provisions of Section 25-H of the Act which inter alia contemplate that in case the employer proposes to take into his employment any person he shall give an opportunity to the retrenched workman to offer himself for reemployment and that the retrenched workman shall have preference over the other persons. No such endeavour seems to have been made by him.

8. It is thus to be held that the termination of the petitioner was illegal and in contravention to the provisions of Section 25-G and 25-H of the Industrial Disputes Act, as discussed hereinabove (supra). As a sequel thereto the termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be reinstated forthwith at the same place and post on which the petitioner was engaged before his illegal termination.

9. For all the aforesaid reasons the reference is allowed. The termination of the petitioner w.e.f. 10.1.2009 is set aside and quashed. The petitioner is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was unemployed during the period of his forced idleness, and as such the petitioner shall also be entitled to 50% back wages w.e.f. 10.1.2009 i.e. amounting to Rs.1950/- per month (on the basis of Rs.130/- per day as is clear from Ex.PW1/C). The reference is answered in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 6th day of October, 2010.

KR. CHIRAG BHANU SINGH
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 518/2008
Instituted on : 14.7.2008
Decided on: : 5.7.2010

Shri Ashok Kumar S/o Shri Ram Prasad, R/o Village & P.O. Darwar, Tehsil Sarkaghat, District Mandi, H.P.
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whethis retrenchment of services of Shri Ashok Kumar S/o Shri Ram Prasad by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No.3 on 1.10.2000 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005. 3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further is averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and othis workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.10.2000. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

26. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

27. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

28. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F and 25-G are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

30. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

31. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

32. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1997 dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

33. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

34. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum239
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 267/2009
Date of Institution : 7.3.2009
Date of decision : 2.7.2010

Shri Ashok Kumar S/o Shri Shambhu Ram, R/o Village & P.O. Tour Khola, Tehsil Sarkaghat, Distt. Mandi,
H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Ashok Kumar S/o Shri Shambhu Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on January, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak

Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the mala fide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.

Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue no. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic canons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.*— For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on January, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. Authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of

the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1182/07-803, dated 8.2.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated February 26, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref: No. : 7/2006
Instituted on : 3.1.2006
Decided on : 17.8.2010.

Shri Vichiter Singh son of Ram Singh resident of Village Jajwal P.O. Ghailour, Tehsil Dehra, Distt. Kangra,
H.P. ..Petitioner.

Vs.

The Dehra Friends Co-operative Transport Society Ltd. Dehra, Distt. Kangra, H.P., through its president.
..Respondent.

Reference under section 10(1) of the Industrial Disputes Act, 1947

For the applicant : Sh. Dinesh Sharma, adv. csl. for the applicant. .
For the respondent : Sh. Anand Sharma, adv. vice csl. for the respondent.

AWARD

1. The reference has been received from the appropriate Government in the following terms:

“Whether the termination of services of Shri Vichiter Singh s/o Ram Singh, Ex driver by the President, Dehra Friends Transport Co-operative Society Limited, Dehra, District Kangra, H.P. w.e.f. 9-6-2002 without conducting any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. During the course of proceeding it transpires that the petitioner had crossed the age of 60 years and as such would have retired by now. In those circumstances a bid was made at conciliation. 3. In this behalf the petitioner agreed that in case the respondents are willing to get his pension finalized he shall not press his claim for reinstatement as he has attained the age of superannuation. The respondent too was not averse to the said proposition. The respondent has already forwarded the case of the petitioner for pension under the Employees Provident Scheme 1952 to the E.P.F Commissioner Shimla as was worked out inter se the parties during the course of settlement before this Court. Copy of the form sent by the respondent has been tendered in the Court today itself.

4. As per the judgment of the Hon’ble Supreme Court titled as State of Bihar -vs- Gungaly DN {(1958) II LLJ 634}}, the provision of the Act do not prevent this Court from accepting any voluntary settlement either inside or

outside the Court. The respondent has further submitted today that an amount of Rs. 11,800/- is due to be paid to the petitioner, which they are willing to pay.

5. Therefore seeing to the totality of circumstances discussed above and the facts with the petitioner has already attained the age of superannuation, the settlement inter se the party is allowed. As a sequel thereof the respondent shall pay the outstanding amount Rs. 11,800 to the petitioner within 10 days from today. The pension case of the petitioner has already been sent to the E.P.F. Commissioner Shimla. It is however directed that the E.P.F. Commissioner shall decide the case of the petitioner within 2 months.

6. The aforesaid reference is thus ordered to be disposed of in the terms of the compromise as having been partly satisfied, as discussed herein above supra. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 17th day of August, 2010.

KR. CHIRAG BHANU SINGH

Presiding Judge,

H.P. Industrial tribunal-Cum-

Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 108/2009

Instituted on : 26.2.2009

Decided on: : 30.8.2010

Shri Balbir Singh S/o Shri Duni Chand, R/o Village Kohan, P.O. Sajao Piplu, Tehsil Sarkaghat, Distt. Mandi.
H.P. *..Petitioner.*

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Balbir Singh S/o Shri Duni Chan, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No.3 on 1.5.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central

Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. .. OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means²⁶⁹

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.5.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 962/2007-9999, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 10, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

Kr. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 510/2008
Instituted on : 14.7.2008
Decided on : 21.10.2010

Shri Basant Singh S/o Shri Bhadur Singh, R/o Village Hiyun, P.O. Tihra, Tehsil Sarkaghat, Distt. Mandi. H.P.
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Basant Singh S/o Shri Bhadur Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 4.6.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing

indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.*—For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 4.6.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with. 25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment. 26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006. 27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages,

litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 668/07-2060, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 513/2008
Instituted on : 14.7.2008
Decided on : 30.8.2010

H.P. Shri Basant Singh S/o Shri Sukh Ram, R/o Village Jamula, P.O. Sandhole, Tehsil Sarkaghat, Distt. Mandi.
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Basant Singh S/o Shri Sukh Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No. 3 on 18.5.1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No

Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No.1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 18.5.1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP

No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 671/07-2080, dated 17.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned

contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 2/2006
Date of Institution : 3.1.2006
Date of decision : 23.10.2010

Shri Beli Ram S/o Shri Shibu Ram & (8) workmen C/o The Organizing Secretary, (CITU), H. No.15/12, Ram Nagar, Distt. Mandi, H.P.Petitioners

Versus

The Divisional Forest Officer, Forest Division, Suket at Sunder Nagar, Distt. Mandi, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the demand raised by Shri Beli Ram S/o Shri Shibu Ram and (8) others workmen with regards their termination w.e.f. 31.3.2002 through the Organising Secretary, (CITU) House No.15/12, Ram Nagar, Mandi, H.P. (copies of their demand notices enclosed) before the Divisional Forest Officer, Forest Division, Suket at Sunder Nagar, District Mandi, H.P. are proper and justified? If yes, what relief and service benefits the above aggrieved workmen are entitled to?”

2. In furtherance to the reference the petitioners including Beli Ram have averred that they were engaged by the respondent as daily rated beldar in Forest Division Suket on the following days:

- i. Beli Ram (Claimant No.1- 01.02.1999)
- ii. Muni Lal (Claimant No.2- 06.11.1998)
- iii. Gopal (Claimant No.3- 06.11.1998)
- iv. Yadev Singh (Claimant No.4-06.11.1998)
- v. Singh Ram (Claimant No.5- 06.11.1998)
- vi. Hosiahar Singh (Claimant No.6 -06.11.1998)
- vii. Dhani Ram (Claimant No.7- 01.02.1998)
- viii. Negi Ram (Claimant No.8 - 01.03.1999)
- ix. Devi Singh (Claimant No.9 – 01.07.1996).

3. The petitioners continued to work as such continuously till 31.3.2002 and their service were disengaged w.e.f. 1.4.2002. All the petitioners had worked continuously and even received salary for the entire period. The petitioners were however were not shown on work and nor were their names reflected in the seniority list. Only petitioner Beli Ram and Dhani Ram were shown to have completed more than 240 days in the year 2001. The respondents have allowed the persons junior to the petitioners to continue. Thereupon the petitioners had approached the Labour Officer. On his intervention a settlement was reached inter se the parties on 10.9.2002 and all the petitioners had come to be reengaged w.e.f. 17.9.2002.

4. The respondents however again started giving illegal and fictional breaks to the petitioners. Nonetheless they completed 240 days in the year 2003-04 and 2004-2005.

5. Since the respondents continued to give fictional breaks to the petitioners and the respondents were not abiding by the settlement dated 17.9.2002 the petitioners again approached the Labour Officer. Again a memorandum of settlement was signed between the respondent and the petitioners on 26.4.2003 but even the same was not implemented by the respondent. Consequently the Labour Commissioner had directed the Labour Inspector, Sundernagar to file a complaint before the competent Court against the respondent no.2 i.e. DFO, Sundernagar for violation of the provisions of Section 18(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

6. It is further averred by the petitioners that while their services were dis-engaged by the respondents illegally many juniors namely Ram Singh, Tilak Raj, Devi Saran, Roshan Lal, Rajesh Kumar, Sanju, Hari Singh and others were allowed to continue uninterruptedly and even allowed to complete 240 days in each calendar year.

7. The petitioners thus prayed that the respondent be directed to reengage the petitioners. They be reckoned on duty from their initial engagement till 31.3.2002 and their seniority be recognized from their initial engagements. Their seniority be protected w.e.f. 1.4.2002 along with all back wages for the said period and the petitioners be regularized as per their seniority list.

8. The respondents while contesting the claim have raised preliminary objections that the aforesaid workmen have been engaged on daily wages on seasonal forestry work keeping in view the availability of work and funds and as such their services were dis-engaged on completion of work and that the dispute was not a "labour dispute".

9. On merits the engagement of the petitioners were not denied. It was however submitted that they were engaged purely on seasonal forestry work keeping in view the availability of work and funds. It was further averred that except two workmen who had completed 240 days in the year 2001 none of the petitioners had completed 240 days in any calendar year. All the workmen were stated to have completed 240 days only in the year 2005. The agreement arrived between the Labour Union and the respondent no.2 was further stated to have been implemented in letter and spirit. It was further denied that the services of the workmen had been retrenched by the department. The break was stated to have given by the respondent due to non availability of work and funds. The respondent thus prayed for the dismissal of the reference.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 19.3.2007 the following issues came to be framed by my Ld. Predecessor.

1. Whether the dis-engagement of petitioner from service is proper and justified?

..OPR

2. Whether the administration of the fictional breaks by the respondent in the service of the petitioner is proper and justified? ..OPR
3. Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : The issue has become redundant.

Issue No.2 : Partly No

Relief. : Partly allowed as per the operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. Though the reference primarily pertains to the termination of the petitioners w.e.f. 31.3.2002, but it has apparently become redundant because of the settlement arrived inter se the parties on 10.9.2002 and 26.4.2003 (Ex.RW1/C and Ex. RW1/D). The said factum that the workmen are still working in the Suket Forest Range is not denied by the Divisional Forest Officer who has appeared as RW1. He has on the contrary, categorically deposed that all the applicants/petitioners are presently working in Suket Forest Range. In fact even in the statement of claim the dis-engagement has not been challenged nor any reengagement has been sought. The question of dis-engagement of the petitioners from service w.e.f. 31.3.2002 thus has become redundant. The issue is decided accordingly.

Issue No. 2 :

14. Though the issue in hand has not been referred to this Court by way of the present reference. However after 31.3.2002 as to what is the ancillary relief the workmen are entitled to, more so the question of granting fictional breaks can be looked into. For this limited purpose thereafter the issue can be answered by this Court.

15. It is not denied even by the respondent that they had entered into settlement with the petitioners, and that too not once but twice. One on 10.9.2002 and the other on 26.4.2003. The memorandums of understanding has been placed by the respondent themselves as Ex. RW1/C and Ex. RW1/D. The said memorandums of understanding were entered into inter se the parties on 10.9.2002 and 26.4.2003. It inter alia stipulated that the Divisional Forest Officer shall reinstate the services of all workmen who had been terminated by him on 31.3.2003, their seniority was to be protected from the said date and that the workmen shall be given the regular work and no undue breaks shall be given to them thereafter.

16. As per Section 18 of the Industrial Disputes Act any settlement arrived at by agreement between the employer and the workman even during the course of conciliation proceedings shall be binding on all parties to the industrial dispute. It is thus manifest that the agreement arrived at inter se the parties was binding on the respondent. Atleast after 31.3.2002 (i.e. the date of termination) the respondents were required not to give fictional breaks to the petitioners and their seniority was to be reckoned from the said date.

17. The question of termination having become redundant in view of the re-engagement of the petitioners. However because of the settlement arrived inter se the parties the reference in question vis-a-vis fictional breaks prior to 31.3.2002 was required to be amended and sent for adjudication to this Court. However no steps were taken by the petitioners in this behalf. I cannot thus venture and go to hold that the respondents had given fictional breaks to the petitioners prior to 31.3.2002.

18. Nonetheless the respondent was obligated under the provisions of Section 18 of the Act to have abided by the memorandum of settlement atleast after 31.3.2002, as agreed between them. No fictional breaks were required to be given to the petitioners thereafter and their seniority atleast was to be reckoned from that date, if not earlier.

19. For all the reasons discussed above it is however directed that henceforth the respondent shall abide by the settlement dated 26.4.2003. The respondent shall not grant any fictional breaks to the petitioners any further. Their seniority shall be reckoned w.e.f. 31.3.2002 as per the settlement and even beyond that if they fulfill the prerequisites as envisaged under the Act and the scheme formulated by the State of H.P. The issue in hand is decided accordingly.

RELIEF

20. For all the reasons discussed the reference is partly allowed. It is therefore directed that henceforth the respondent shall abide by the settlement dated 26.4.2003. The respondent shall not grant any fictional breaks to the

petitioners any further. Their seniority shall be reckoned w.e.f. 31.3.2002 as per the settlement and even beyond that if they fulfill the prerequisites as envisaged under the Act and the scheme formulated by the State of H.P. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 23rd day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 269/2008
Instituted on : 13.6.2008
Decided on : 30.8.2010

Smt. Bhikhi Devi W/o Shri Amar Singh, R/o Village Hawani, P.O. Barotti, Tehsil Sarkaghat, District Mandi,
H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Smt. Bhikhi Devi W/o Shri Amar Singh by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No. 3 on 4.1.1999 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No.1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (a) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 4.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to

protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1738, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated May 7, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 269/2008
Instituted on : 13.6.2008
Decided on : 30.8.2010

Smt. Bhikhi Devi W/o Shri Amar Singh, R/o Village Hawani, P.O. Barotti, Tehsil Sarkaghat, District Mandi,
H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Bhikhi Devi W/o Shri Amar Singh by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No. 3 on 4.1.1999 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP

No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of

the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precinctsthereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.*—For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 4.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1738, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated May 7, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 446/2008
Instituted on : 13.6.2008
Decided on : 5.7.2010

H.P. Smt. Bimla Devi W/o Shri Raj Kumar, R/o Village Datwar, P.O. Sandhole, Tehsil Sarkaghat, District Mandi,
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Smt. Bimla Devi W/o Shri Raj Kumar by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No. 3 on 10.12.2000 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue no. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 10.12.2000. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

26. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

27. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act. 28. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and

above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F and 25-G are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

30. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

31. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

32. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1748, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

33. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

34. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. :532/2008
Instituted on :14.7.2008
Decided on :30.8.2010

Shri Biri Singh S/o Shri Bhund Ram, R/o Village & P.O. Giun, Tehsil Sarkaghat, Distt. Mandi. H.P.

..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Biri Singh S/o Shri Bhund Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No. 3 on 13.5.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of

the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus: "(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.*— For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-(r) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 13.5.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A□2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006. 27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members...."* There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2:

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2033, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. :532/2008
Instituted on :14.7.2008
Decided on: :30.8.2010

Shri Biri Singh S/o Shri Bhund Ram, R/o Village & P.O. Giun, Tehsil Sarkaghat, Distt. Mandi. H.P.

..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Biri Singh S/o Shri Bhund Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No.3 on 13.5.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central

Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful. 18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.*— For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 13.5.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A□2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members...."* There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2033, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/-as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 458/2008
Instituted on : 13.6.2008
Decided on : 21.10.2010

Smt. Budhi Devi W/o Shri Shanit Ram, R/o Village Pren, P.O. Langana, Tehsil Sarkaghat, District Mandi,
H.P. *Petitioner.*

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Smt. Budhi Devi W/o Shri Shanti Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No. 3 on 1.12.1998 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central

Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (nn) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1.12.1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an

amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1751, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 458/2008
Instituted on : 13.6.2008
Decided on : 21.10.2010

Smt. Budhi Devi W/o Shri Shant Ram, R/o Village Pren, P.O. Langana, Tehsil Sarkaghat, District Mandi,
H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Budhi Devi W/o Shri Shanti Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No.3 on 1.12.1998 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No

Issue 4 :	No
Issue 5 :	No
elief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1.12.1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25□G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial No.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and

compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1751, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had

been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

Announced in the open Court today this 29th day of Sept., 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 518/2008
Instituted on : 14.7.2008
Decided on : 5.7.2010

Shri Ashok Kumar S/o Shri Ram Prasad, R/o Village & P.O. Darwar, Tehsil Sarkaghat, District Mandi, H.P.
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whethis retrenchment of services of Shri Ashok Kumar S/o Shri Ram Prasad by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No.3 on 1.10.2000 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further is impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further is averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and othis workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the

meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.10.2000. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The respondents have not only violated the provisions of the Act as

discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

26. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and

compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

27. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act. 28. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F and 25-G are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back- wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

30. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

31. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

32. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1997 dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

33. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

34. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/ as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 267/2009
Date of Institution : 7.3.2009
Date of decision : 2.7.2010

Shri Ashok Kumar S/o Shri Shambhu Ram, R/o Village & P.O. Tour Khola, Tehsil Sarkaghat, Distt. Mandi,
H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Ashok Kumar S/o Shri Shambhu Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on January, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 :	Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	o
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmenserving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic canons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on January, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial No.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. Authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003

respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1182/07-803, dated 8.2.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated February 26, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref: No. : 7/2006
Instituted on : 3.1.2006
Decided on : 17.8.2010.

Shri Vichiter Singh son of Ram Singh resident of Village Jajwal P.O. Ghailour, Tehsil Dehra, Distt. Kangra,
H.P. ..Petitioner.

Vs.

The Dehra Friends Co-operative Transport Society Ltd. Dehra, Distt. Kangra, H.P., through its president.
..Respondent.

Reference under section 10(1) of the Industrial Disputes Act, 1947

For the applicant : Sh. Dinesh Sharma, adv. csl. for the applicant. .
For the respondent : Sh. Anand Sharma, adv. vice csl. for the respondent.

AWARD

1. The reference has been received from the appropriate Government in the following terms:

“Whether the termination of services of Shri Vichiter Singh s/o Ram Singh, Ex driver by the President, Dehra Friends Transport Co-operative Society Limited, Dehra, District Kangra, H.P. w.e.f. 9-6-2002 without conducting any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. During the course of proceeding it transpires that the petitioner had crossed the age of 60 years and as such would have retired by now. In those circumstances a bid was made at conciliation.

3. In this behalf the petitioner agreed that in case the respondents are willing to get his pension finalized he shall not press his claim for reinstatement as he has attained the age of superannuation. The respondent too was not averse to the said proposition. The respondent has already forwarded the case of the petitioner for pension under the Employees Provident Scheme 1952 to the E.P.F Commissioner Shimla as was worked out inter se the parties during the course of settlement before this Court. Copy of the form sent by the respondent has been tendered in the Court today itself.

4. As per the judgment of the Hon'ble Supreme Court titled as State of Bihar -vs- Gungaly DN {(1958) II LLJ 634}}, the provision of the Act do not prevent this Court from accepting any voluntary settlement either inside or outside the Court. The respondent has further submitted today that an amount of Rs. 11,800/- is due to be paid to the petitioner, which they are willing to pay.

5. Therefore seeing to the totality of circumstances discussed above and the facts with the petitioner has already attained the age of superannuation, the settlement inter se the party is allowed. As a sequel thereof the respondent shall pay the outstanding amount Rs. 11,800 to the petitioner within 10 days from today. The pension case of the petitioner has already been sent to the E.P.F. Commissioner Shimla. It is however directed that the E.P.F. Commissioner shall decide the case of the petitioner within 2 months.

6. The aforesaid reference is thus ordered to be disposed of in the terms of the compromise as having been partly satisfied, as discussed herein above supra. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 17th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 108/2009
Instituted on : 26.2.2009
Decided on: : 30.8.2010

Shri Balbir Singh S/o Shri Duni Chand, R/o Village Kohan, P.O. Sajao Piplu, Tehsil Sarkaghat, Distt. Mandi.
H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Balbir Singh S/o Shri Duni Chan, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No. 3 on 1.5.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005. 3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of

Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs. 50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.5.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be

offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members...."* There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 962/2007-9999, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 10, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 268/2008
Instituted on : 13.6.2008
Decided on : 5.7.2010

Shri Balbir Singh S/o Shri Govind Ram, R/o Village Thana, P.O. Kango Gahra, Tehsil Sarkaghat, Distt. Mandi. H.P. *..Petitioner.*

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Balbir Singh S/o Shri Govind Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No.3 on 24.6.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law. 20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.*— For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 24.6.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the

aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back- wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1709, dated 31.3.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated May 17, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No. 486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

Kr. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 510/2008
Instituted on : 14.7.2008
Decided on : 21.10.2010

Shri Basant Singh S/o Shri Bhadur Singh, R/o Village Hiyun, P.O. Tihra, Tehsil Sarkaghat, Distt. Mandi. H.P.
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Basant Singh S/o Shri Bhadur Singh, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08□07□2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No. 3 on 4.6.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No

Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue no. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of

such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 4.6.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the

aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

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31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 668/07-2060, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. :513/2008
Instituted on :14.7.2008
Decided on : 30.8.2010

Shri Basant Singh S/o Shri Sukh Ram, R/o Village Jamula, P.O. Sandhole, Tehsil Sarkaghat, Distt. Mandi.
H.P. ..Petitioner

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ..Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Basant Singh S/o Shri Sukh Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No.3 on 18.5.1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplusage and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and *ex facie* seems to be against the cardinal and basic principle of law. The notification under Section 25N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic canons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus *ipso facto* illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void *ab initio*. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with layoff and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing

indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 18.5.1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

27. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and

compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See 597 Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 671/07/2080, dated 17.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11/23/84(Lab)1D/2007-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 2/2006
Date of Institution : 3.1.2006
Date of decision : 23.10.2010

Shri Beli Ram S/o Shri Shibu Ram & (8) workmen C/o The Organizing Secretary,(CITU), H. No.15/12, Ram Nagar, Distt. Mandi, H.P. ..Petitioners.

Versus

The Divisional Forest Officer, Forest Division, Suket at Sunder Nagar, Distt. Mandi, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the demand raised by Shri Beli Ram S/o Shri Shibu Ram and (8) others workmen with regards their termination w.e.f. 31.3.2002 through the Organising Secretary, (CITU) House No.15/12, Ram Nagar, Mandi, H.P. (copies of their demand notices enclosed) before the Divisional Forest Officer, Forest Division, Suket at Sunder Nagar, District Mandi, H.P. are proper and justified? If yes, what relief and service benefits the above aggrieved workmen are entitled to?”

2. In furtherance to the reference the petitioners including Beli Ram have averred that they were engaged by the respondent as daily rated beldar in Forest Division Suket on the following days:

i. Beli Ram (Clamant No.1- 01.02.1999

- ii. Muni Lal (Claimant No.2- 06.11.1998)
- iii. Gopal (Claimant No.3- 06.11.1998)
- iv. Yadev Singh (Claimant No.4-06.11.1998)
- v. Singh Ram (Claimant No.5- 06.11.1998)
- vi. Hosiahar Singh (Claimant No.6 -06.11.1998)
- vii. Dhani Ram (Claimant No.7- 01.02.1998)
- viii. Negi Ram (Claimant No.8 - 01.03.1999)
- ix. Devi Singh (Claimant No.9 – 01.07.1996).

3. The petitioners continued to work as such continuously till 31.3.2002 and their service were disengaged w.e.f. 1.4.2002. All the petitioners had worked continuously and even received salary for the entire period. The petitioners were however were not shown on work and nor were their names reflected in the seniority list. Only petitioner Beli Ram and Dhani Ram were shown to have completed more than 240 days in the year 2001. The respondents have allowed the persons junior to the petitioners to continue. Thereupon the petitioners had approached the Labour Officer. On his intervention a settlement was reached inter se the parties on 10.9.2002 and all the petitioners had come to be reengaged w.e.f. 17.9.2002.

4. The respondents however again started giving illegal and fictional breaks to the petitioners. Nonetheless they completed 240 days in the year 2003-04 and 2004-2005.

5. Since the respondents continued to give fictional breaks to the petitioners and the respondents were not abiding by the settlement dated 17.9.2002 the petitioners again approached the Labour Officer. Again a memorandum of settlement was signed between the respondent and the petitioners on 26.4.2003 but even the same was not implemented by the respondent. Consequently the Labour Commissioner had directed the Labour Inspector, Sundernagar to file a complaint before the competent Court against the respondent no.2 i.e. DFO, Sundernagar for violation of the provisions of Section 18(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

6. It is further averred by the petitioners that while their services were dis-engaged by the respondents illegally many juniors namely Ram Singh, Tilak Raj, Devi Saran, Roshan Lal, Rajesh Kumar, Sanju, Hari Singh and others were allowed to continue uninterruptedly and even allowed to complete 240 days in each calendar year.

7. The petitioners thus prayed that the respondent be directed to reengage the petitioners. They be reckoned on duty from their initial engagement till 31.3.2002 and their seniority be recognized from their initial engagements. Their seniority be protected w.e.f. 1.4.2002 along with all back wages for the said period and the petitioners be regularized as per their seniority list.

8. The respondents while contesting the claim have raised preliminary objections that the aforesaid workmen have been engaged on daily wages on seasonal forestry work keeping in view the availability of work and funds and as such their services were dis-engaged on completion of work and that the dispute was not a "labour dispute".

9. On merits the engagement of the petitioners were not denied. It was however submitted that they were engaged purely on seasonal forestry work keeping in view the availability of work and funds. It was further averred that except two workmen who had completed 240 days in the year 2001 none of the petitioners had completed 240 days in any calendar year. All the workmen were stated to have completed 240 days only in the year 2005. The agreement arrived between the Labour Union and the respondent no.2 was further stated to have been implemented in letter and spirit. It was further denied that the services of the workmen had been retrenched by the department. The break was stated to have given by the respondent due to non availability of work and funds. The respondent thus prayed for the dismissal of the reference.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 19.3.2007 the following issues came to be framed by my Ld. Predecessor.

1. Whether the dis-engagement of petitioner from service is proper and justified? ..OPR
2. Whether the administration of the fictional breaks by the respondent in the service of the petitioner is proper and justified? ..OPR
3. Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : The issue has become redundant.

Issue No.2 : Partly No

Relief. : Partly allowed as per the operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

13. Though the reference primarily pertains to the termination of the petitioners w.e.f. 31.3.2002, but it has apparently become redundant because of the settlement arrived inter se the parties on 10.9.2002 and 26.4.2003 (Ex.RW1/C and Ex. RW1/D). The said factum that the workmen are still working in the Suket Forest Range is not denied by the Divisional Forest Officer who has appeared as RW1. He has on the contrary, categorically deposed that all the applicants/petitioners are presently working in Suket Forest Range. In fact even in the statement of claim the disengagement has not been challenged nor any reengagement has been sought. The question of disengagement of the petitioners from service w.e.f. 31.3.2002 thus has become redundant. The issue is decided accordingly.

Issue No. 2 :

14. Though the issue in hand has not been referred to this Court by way of the present reference. However after 31.3.2002 as to what is the ancillary relief the workmen are entitled to, more so the question of granting fictional breaks can be looked into. For this limited purpose thereafter the issue can be answered by this Court.

15. It is not denied even by the respondent that they had entered into settlement with the petitioners, and that too not once but twice. One on 10.9.2002 and the other on 26.4.2003. The memorandums of understanding has been placed by the respondent themselves as Ex. RW1/C and Ex. RW1/D. The said memorandums of understanding were entered into inter se the parties on 10.9.2002 and 26.4.2003. It inter alia stipulated that the Divisional Forest Officer shall reinstate the services of all workmen who had been terminated by him on 31.3.2003, their seniority was to be protected from the said date and that the workmen shall be given the regular work and no undue breaks shall be given to them thereafter.

16. As per Section 18 of the Industrial Disputes Act any settlement arrived at by agreement between the employer and the workman even during the course of conciliation proceedings shall be binding on all parties to the industrial dispute. It is thus manifest that the agreement arrived at inter se the parties was binding on the respondent. Atleast after 31.3.2002 (i.e. the date of termination) the respondents were required not to give fictional breaks to the petitioners and their seniority was to be reckoned from the said date.

17. The question of termination having become redundant in view of the re-engagement of the petitioners. However because of the settlement arrived inter se the parties the reference in question vis-à-vis fictional breaks prior to 31.3.2002 was required to be amended and sent for adjudication to this Court. However no steps were taken by the petitioners in this behalf. I cannot thus venture and go to hold that the respondents had given fictional breaks to the petitioners prior to 31.3.2002.

18. Nonetheless the respondent was obligated under the provisions of Section 18 of the Act to have abided by the memorandum of settlement atleast after 31.3.2002, as agreed between them. No fictional breaks were required to be given to the petitioners thereafter and their seniority atleast was to be reckoned from that date, if not earlier.

19. For all the reasons discussed above it is however directed that henceforth the respondent shall abide by the settlement dated 26.4.2003. The respondent shall not grant any fictional breaks to the petitioners any further. Their seniority shall be reckoned w.e.f. 31.3.2002 as per the settlement and even beyond that if they fulfill the prerequisites as envisaged under the Act and the scheme formulated by the State of H.P. The issue in hand is decided accordingly.

RELIEF

20. For all the reasons discussed the reference is partly allowed. It is therefore directed that henceforth the respondent shall abide by the settlement dated 26.4.2003. The respondent shall not grant any fictional breaks to the petitioners any further. Their seniority shall be reckoned w.e.f. 31.3.2002 as per the settlement and even beyond that if they fulfill the prerequisites as envisaged under the Act and the scheme formulated by the State of H.P. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 23rd day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 269/2008
Instituted on : 13.6.2008
Decided on : 30.8.2010

Smt. Bhikhi Devi W/o Shri Amar Singh, R/o Village Hawani, P.O. Barotti, Tehsil Sarkaghat, District Mandi,
H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Smt. Bhikhi Devi W/o Shri Amar Singh by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No. 3 on 4.1.1999 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No. 486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.
5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.
6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No. 3 to retrench the petitioner and roughly a thousand other workmen. 14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “*industrial establishment*” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an ‘industrial establishment’ within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and *ex facie* seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus *ipso facto* illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void *ab initio*. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(1) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 4.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble

Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419. 30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred “*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*” There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1738, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated May 7, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-

wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 446/2008
Instituted on : 13.6.2008
Decided on : 5.7.2010

Smt. Bimla Devi W/o Shri Raj Kumar, R/o Village Datwar, P.O. Sandhole, Tehsil Sarkaghat, District Mandi,
H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
...Respondent
Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Smt. Bimla Devi W/o Shri Raj Kumar by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent No. 3 on 10.12.2000 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplusage of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and

closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus□age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertng to another interesting aspect which stares one at the face and ex□facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 10.12.2000. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial No. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

26. The Hon’ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon’ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

27. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

28. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F and 25-G are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this behalf support can ably be drawn from the judgment of the Hon’ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred “*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*” There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the

respondents have brazenly offended the statutory provisions of Section 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

Issue 2 :

30. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

31. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

32. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1748, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

33. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

34. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. :532/2008
Instituted on :14.7.2008
Decided on: :30.8.2010

Shri Biri Singh S/o Shri Bhund Ram, R/o Village & P.O. Giun, Tehsil Sarkaghat, Distt. Mandi. H. P.
..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Biri Singh S/o Shri Bhund Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent No. 3 on 13.5.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005. 3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H..

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent No.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per

working day for the preceding twelve months. The expression “industrial establishment” is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “*industrial establishment*” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (ii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an “industrial establishment” within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and *ex facie* seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus *ipso facto* illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void *ab initio*. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 13.5.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial No. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act. 29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006

without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 2 :

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue 3 :

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2033, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4 :

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

Issue 5 :

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 458/2008
Instituted on : 13.6.2008
Decided on: : 21.10.2010

Smt. Budhi Devi W/o Shri Shant Ram, R/o Village Pren, P.O. Langana, Tehsil Sarkaghat, District Mandi,
H.P.Petitioner

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Budhi Devi W/o Shri Shanti Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent no.3 on 1.12.1998 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP
2. Whether the petition is not maintainable, as alleged. ..OPR
3. Whether the petition suffers from the vice of delay and laches. ..OPR
4. Whether the petitioner is guilty of suppressio veri. ..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “*industrial establishment*” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (xii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an “industrial establishment” within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to

be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1.12.1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred *“that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....”* There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1751, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 188/2005

Date of Institution : 19-12-2005

Date of decision : 18-8-2010

Sh. Chain Lal s/o Sh. Tek Chand, Village Kuthal, P.O. Saach, Tehsil Pangi, Distt. Chamba, H.P.Petitioner

Versus

The Divisional Forest Officer, Pangi, District Chamba, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, A.R.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Chain Lal s/o Sh. Tek Chand workman by the Divisional Forest Officer, Pangi, District Chamba, H.P. w.e.f. Dec., 2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In furtherance to the reference the petitioner has averred in the statement of claim that he was engaged on daily wage basis by the respondent on 20-5-1995 in Forest Nursery at Chhota Bamble. His area of operation was open for 9 months because of snow. Since the petitioner is working in Tehsil Pangi, which is snow bound, a period 160 days has been notified by the State to invoke the protection of Section 25-F of the Industrial Disputes Act. Further per the petitioner he has worked for the following days as per the chart given below:

S.No.	Years	Worked for No. of days during the year.
1.	1995-96	148
2.	1996-97	183
3.	1997-98	197
4.	1998-99	221
5.	1999-2000	163
6.	2000-01	165
7.	2001-02	195

3. The petitioner was further stated to have been disengaged in December, 2001 verbally and without any notice.

4. Against the illegal termination the petitioner had preferred an original application (O.A.No.1253/2002 titled Chain Lal -vs- State of H.P.) before the Administrative Tribunal but the same was withdrawn on 9-3-2003. Thereupon the petitioner had raised the dispute and hence the present reference.

5. It is however, further the case of the petitioner that he was reengaged in Ist April, 2002 and he worked as such till 28-4-2002. From the next date the petitioner had been asked not to come for work as some trees have been cut in the forest by some one. The petitioner was further allowed to continue to work from May to June, 2002 by some another Guard namely Jagit Singh. The termination of the petitioner is thus stated to be in violation of the provision of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act) . It is further averred that the juniors have been retained by the respondent and as such his termination is also bad in respect of violation of Section 25-G and 25-H of the Industrial Disputes Act. The petitioner thus claims reinstatement with full backwages w.e.f. December, 2001.

6. The respondent while contesting the claim have inter alia averred that the petitioner was engaged as seasonal worker w.e.f. May, 1995.

7. Since Pangi is a snow bound area and working season is limited. The forestry work is seasonal and purely casual in nature. The petitioner had worked with the respondent since May, 1995 and that too for seasonal work.

It is further the case of the respondent that in the year 2002 the Department has sustained heavy losses on account of the petitioner having connived with offender of illicit felling of trees from Kuthal DPF. A damage report has been prepared against some Chain Singh and Sh. Janam Singh on 28-4-2002. The petitioner used to come from his home to perform his duty. The site where the trees were felled was on the way and the petitioner did not report the illicit felling to the concerned Guard, as the offenders were related to the petitioner. As such the services of the petitioner were not required by the Department. In his behalf notice had been issued to the petitioner.

8. It is admitted by the respondent that the petitioner had filed an O.A. No. 1253/2002 titled as Chain Lal -vs- The State of H.P. which have been dismissed as withdrawn on 9-4-2003. But, further per the respondent the petitioner had filed another O.A. bearing No. 3021/2003 whereby an interim order was passed on 17-10-2003 and the petitioner was ordered to be reengaged, if some junior were retained by the department. Thereupon the petitioner had been reengaged by the respondent. The respondent thus prayed for the dismissal of the reference.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. I notice that the following issues come to be framed on 25-2-2009 by my Ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?OPP.
2. Whether the petitioner was engaged as daily wage worker as against a seasonal work. If so, to what effect? ...OPR.
3. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

- | | |
|-------------|--|
| Issue No. 1 | Has become redundant. |
| Issue No.2 | No |
| Issue No. 3 | Allowed partly as per the operative part of the award. |

REASONS FOR FINDINGS

ISSUE No. 1 & 2.

12. Both the issues are being taken up together for discussion as they are co-related and intermingled:

13. As per the pleadings on record and the deposition of the Divisional Forest Officer who was appeared as RW1, the petitioner is still working with the respondent, as he was reengaged in pursuance to the interim orders passed by the Administrative Tribunal vide Ex. RW1/D on record. The petitioner is continuously working with the department thereafter. The Divisional Forest Officer has also placed on record up to date the mandays Ex. RW1/E and RW1/F. The perusal of the mandays shows that the petitioner has worked for more than 160 days in many years. The petitioner is continuing to work in furtherance to the interim directions and no resort have been taken to disengage his service even after the final order was passed by the Administrative Tribunal dismissing the O.A. It is more than clear that the termination of the petitioner in December 2001 has gone into oblivion. In fact the notice for disengagement issued to the petitioner vide Ex. RW1/C was also defective in the eyes of law as it was not in consonance with the provisions of Section 25-F. Nonetheless since the petitioner's disengagement had been set at naught by the interim orders of the Administrative Tribunal and the petitioner was thereupon reengaged and continued working as such with the respondent, the reference has literally died its death. The reference pertains only to the termination of the petitioner w.e.f. December 2001, but he having been reengaged the reference has literally become infructuous.

14. The man days placed on record by the respondents vide Ex. RW-1/F further shows that the petitioner continued working till now uninterruptedly. The plea of seasonal work is also fallacious as is abundantly clear from Ex. RW-1/E, which clearly shows that the petitioner had put in more than 160 days in many of the years he worked with the respondent. Having allowed the petitioner to continue working even after the dismissal of the O.A. shows that the respondents have sufficient work at their disposal.

15. However, even while holding such it is directed that the respondent shall not give any fictional breaks to the petitioner henceforth. It further goes without saying that the services of the petitioner shall be reckoned w.e.f. 1995 for the purpose of seniority and continuity, keeping in view the interim orders passed by the Administrative Tribunal which have been duly respected by the respondent more so keeping in view the fact with even after the dismissal of the O.A. the services of the petitioner were continued to be availed by the respondent uninterruptedly. The reference is answered accordingly.

16. The plea of seasonal worker set up by the respondent is otherwise falsified by the mandays placed on record by the respondent, vide Ex. RW1/E.

17. Both the issues are thus accordingly decided partly in favour of the petitioner and against the respondent.

RELIEF

18. For all the foregoing reasons discussed above the reference is partly allowed. The respondent is directed not to give any fictional breaks to the petitioner henceforth. His services shall be reckoned from the year 1995 for the purpose of seniority and continuity of services. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 18th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 13/2006
Date of Institution : 3.1.2006
Date of decision : 25.8.2010

Shri Chain Singh S/o Shri Heer Chand, R/o Village Kulhal, P.O. Sach, Tehsil Killar, District Chamba, H.P.
....Petitioner

Versus

The Executive Engineer, HPPWD, Division, Killar, Tehsil Killar, Tehsi Panig, Distt. Chamba. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the action of the Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. to terminate the services of Shri Chain Singh S/o Shri Heer Chand workman w.e.f. 4.12.2001 and finally w.e.f. 20.5.2002 and not allowing seniority for the period of disengagement and reengagement as per orders of Hon’ble Administrative Tribunal, H.P. Shimla is legal and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to.”

2. The case set up by the petitioner in the statement of claim is that he was engaged as a beldar on daily wage basis in May, 1997 in Sach Sub Division of Pangi Division. The petitioner worked continuously till 1998 and even completed 240 days in a calendar year. However on 10.10.1999 the services of the petitioner were dis-engaged. He was however re-engaged in pursuance to the orders of the Tribunal dated 9.4.2000. The services of the petitioner was however dis-engaged on 4.12.2001 after issuing a notice to him.

3. It is further averred by the petitioner that his dis-engagement is illegal as juniors have been retained by the respondent. The notice under section 25-F is illegal and malafide as his oral dis-engagement had earlier been set aside by the Administrative Tribunal.

4. The respondent while controverting the claim set up by the petitioner has raised a preliminary objection that after having been re-engaged in 2000, in pursuance to the orders of the Administrative Tribunal the petitioner continued to work with the respondent till December, 2001. As sufficient funds were not available and because of the impending winter season construction activity in Pangi valley was paralyzed, few workers were disengaged on the basis of 'last come first go', after following the due procedure provided in law and the petitioner was one of them. After 2001 the work was available on seasonal basis but the petitioner never approached the respondent for work. On facts it is averred by the respondent that Jeet Singh S/o Shri Param Dass is senior to the petitioner. The rest of the contentions were not denied.

5. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

6. I notice that the following issues come to be framed on 29.10.2007 by my Ld. Predecessor.

1. Whether the dis-engagement from services of the claimant by the respondent is proper and justified? . . .OPP
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .OPP
3. Whether the petition is not maintainable before this Court being time barred? . . .OPR
4. Relief.

7. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1	No
Issue No.2	As per operative part of the award.
Issue No. 3	No
Relief	Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 & 2.

8. Both the issues are being taken up together for discussion as they are co-related and intermingled:

9. Though the petitioner claims that a notice under Section 25-F had been issued to him at the time of his dis-engagement but as per the deposition of the Executive Engineer Shri Vikash Sood, who has appeared as RW1 no notice and retrenchment compensation have been given to the petitioner. As per him the petitioner has working with the department till the year 2004 and thereafter he had abandoned work himself. Further per him the services of the petitioner were dis-engaged for want of funds and work.

10. The pleaded case of the respondent however is that in December, 2001 because insufficiency of funds and impending winter season the services of the petitioner were dis-engaged strictly on the basis of 'last come first go' and after following the procedure envisaged under law. There is however nothing on record to show that the notice had been issued to the petitioner. It gains significance because of the diametrically opposite stances taken by the respondent in the pleadings and there evidence. It is also otherwise pleaded that after 2001 seasonal work was available but the petitioner never approached the respondent. The said pleadings is also based on complete misreading of law as Section 25-H of the Act otherwise casts an obligation on the employee to first given an opportunity to the retrenched workman and offer themselves for reemployment. It is not the other way around as is being pleaded by the respondent.

11. The respondent has also averred that it was the petitioner who was the last who had joined the respondent and as such his services were rightly terminated as per provisions of Section 25-G. However strictly no seniority list has been placed on record by the respondents. They have merely placed on record the year-wise mandays of petitioner Chain Singh vide Ex.RW1/A wherein he stated to have worked for 160 days in 1997. They have also placed on record annexure R2 along with the reply to show that one Jeet Singh had been working with them since May, 1997. Who was senior is not conclusively proved on record. Whether it was the petitioner or Jeet Singh or one Om Prakash is not clear from the evidence on record. The evidence in this respect could have been the seniority list but the same has not seen the light of the day. It is thus to be inferred that even the dis-engagement of the petitioner is not based on the principle of 'last come first go' as is being projected by the respondent. The respondent has not even produced on record anything during the course of argument to show that any notice was issued to the petitioner nor any seniority list has been shown as such the inference can ably be drawn to the contrary. Furthermore the Executive Engineer himself has in uncertain terms deposed that notice or retrenchment compensation was not given to the petitioner.

12. For all the reasons discussed hereinabove it is held that the termination of the petitioner was illegal and against the statutory provisions of the Industrial Disputes Act. It is consequently set aside. The petitioner is ordered to be re-engaged forthwith. The petitioner has not led any evidence to remotely show that he was not gainfully employed during the interregnum and as such I do not deem it just and proper to award backwages to the petitioner. He is however entitled to continuity and seniority in service prior to the year 2001.

ISSUE NO. 3

13. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Not only this our own Hon'ble High Court has further gone on to hold that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same have been referred to this Court by the State Government. The Court can only take into consideration the delay at the time of granting the main relief. In a case titled as Naginder Kumar –vs-HPSEB (CWP No.885 of 2007 decided on 1-11-2007), it has been held thus.

RELIEF

14. For the foregoing reasons discussed hereinabove supra, the reference is allowed. The termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith. The petitioner is held entitled to continuity in service and seniority prior to his dis-engagement i.e. the year 2001. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 25th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 251/2008
Instituted on : 13.6.2008
Decided on: : 5.7.2010

Shri Chaman Lal S/o Shri Parma Ram, R/o Village Phakhdol, P.O. Shayoh, Tehsil Sarkaghat, Distt. Mandi.
H.P.Petitioner

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Chaman Lal S/o Shri Parma Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 9.12.1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus□age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25□N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of

such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 9.12.1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held

the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1677, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 12, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had

been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 5/2002
Date of Institution : 17.1.2002
Date of decision : 25.9.2010

Sh. Chamaru s/o Sh. Shridhar, Village Khankad, P.O.Trekadi, Tehsil Salooni, Distt. Chamba H.P.

. .Petitioner

Versus

The Divisional Officer, Forest (Forest Division, Salooni) District, Chamba, H.P.

. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the act of Divisional Forest Officer, Forest Division Salooni, Distt. Chamba, H.P. not regularise Sh. Chamaru s/o Sh. Shridhar w.e.f. 01□01□1996 is proper and justified? If not, what reliefs i.e. dated of regularization, salary seniority and compensation the above workman is entitled to?”

2. In furtherance to the reference the petitioner has averred in the statement of claim that he was employed by the respondent on daily wage bases as Nursery Chowkidar in the year 1980. He has completed more than 240 days in each calendar year since 1986. The petitioner had been rendering continuous service with the respondent for the purpose of Section 25□B of the Industrial Disputes Act and he has completed more than 10 years of continuous service

with the respondent. He was thus liable to be regularized. The respondent had not followed the policy of the State. The respondents have already regularized the service of other juniors people. The petitioner thus claim his regularization w.e.f. 1.1.1999.

3. The respondent while contesting the claim has averred that the petitioner was engaged as a daily waged worker and worked as such from Sept., 1990 to June, 2003.

4. The respondent had further averred that the petitioner was not disengaged but he had left the work off his own accord and more over he had engaged for Forestry work which was seasonal in nature and subject to availability of work.

5. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

6. I notice that on 24.5.2006 the following issues came to be framed by my Id. predecessor:

1. Whether the act of the respondent not to regularize the petitioner w.e.f. 1-1-1996 is tenable? . . .OPP.
2. If the above issue is proved in the affirmative what benefits the petitioner is entitled to? . . .OPP.
3. Relief.

7. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No.2 : No.
Relief. : Dismissed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2.

8. Both the issues are being taken up together for discussion as they are co-related and intermingled.

9. The reference in the present case pertains to the non-regularization of the petitioner w.e.f. 1-1-1996. In the statement of claim the petitioner himself has averred that his services were disengaged after March, 2004 while he was working at Drakadi Nursery in Chamba District. There is no reference in respect of the termination of the petitioner in the year 2004. Though the petitioner's claims is that he has been working with the respondent since year 1980, but the mandays on record placed by the respondent show that the petitioner was working since 1990 only. As per the mandays on record the petitioner has only completed more than 240 days in the year 1999 and 2001. Even as per the respondent the petitioner has abandoned the job after 1-1-2004.

10. Since there is no reference regarding the disengagement of the petitioner it cannot be held whether it was an act of illegal termination or the case of abandonment. It is by now well settled that the jurisdiction of this Court is circumscribed by the terms of the order of reference and in that sense of the matter the jurisdiction of this Court is limited, restricted only to the issue referred to it by the appropriate Government. Admittedly there is no reference regarding the termination of the petitioner. Even, if, on facts determination had to be made regarding the regularization it had to be dependent upon the continuity of the petitioner as a workmen of the respondent, that too seeing to the number of mandays put by him in each calendar year which are less than 240 days in each year. The question of regularization of the petitioner will arise, once his termination is set aside, which unfortunately is not the reference. This Court thus would not be able to order the regularization of the petitioner.

11. Both the issues are thus decided against the petitioner and in favour of the respondent.

RELIEF

12. For all the aforesaid reasons discussed above the reference is dismissed being devoid on any merits. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 25th day of Sept., 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal cum
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
 CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 316/2008
Instituted on : 13.6.2008
Decided on : 5.7.2010

Shri Chamaru Ram S/o Shri Banku Ram, R/o Village Rosso, P.O. Sadhot, Tehsil Sarkaghat, Distt. Mandi.
 H.P.Petitioner

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
Respondent
 Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Shri Chamaru Ram S/o Shri Banku Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 11.5.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.
5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.
6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplusage of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the petition is not maintainable, as alleged. . . .OPR.
3. Whether the petition suffers from the vice of delay and laches. . . .OPR.
4. Whether the petitioner is guilty of suppressio veri. . . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . .OPR.
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per

working day for the preceding twelve months. The expression “industrial establishment” is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “*industrial establishment*” means

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an ‘industrial establishment’ within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike
which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 11.5.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income*

even to have two square meals per day for his and his family members....” There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1701, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered

accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 421/2008
Instituted on : 13.6.2008
Decided on: : 30.8.2010

Smt. Daromti Devi W/o Shri Devi Ram, R/o Village Daryal (Paryal), P.O. Samor, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Daromti Devi W/o Shri Devi Ram, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent no.3 on 19.11.1998 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the petition is not maintainable, as alleged. . . .OPR.
3. Whether the petition suffers from the vice of delay and laches. . . .OPR.
4. Whether the petitioner is guilty of suppressio veri. . . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. . . .OPR.
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “*industrial establishment*” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an “industrial establishment” within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
 - (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic canons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 19.12.1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred *“that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....”* There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer cum Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005&747/07-1967, dated April 12, 2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated April 22, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 206/2007

Date of Institution : 3.12.2007

Date of decision : 1.10.2010

Shri Daya Nand S/o Shri Garib Dass, R/o Vill. & P.O. Talwar, Tehsi Jaisinghpur, Distt. Kangra, H.P.

....Petitioner

Versus

The Executive Engineer, I&PH Division Thural, Tehsil Jaisinghpur, Distt. Kangra, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“क्या श्री दया नन्द उपरोक्त कामगार सपुत्र श्री गरीब दास गांव व डाकघर तलवाड़ तहसील जैसिंहपुर जिला कांगडा को अधिशासी अभियन्ता हि0 प्र0 सिंचाई एवं जन स्वास्थ्य मण्डल, थुरल, तहसील जैसिंहपुर जिला कांगडा, हिमाचल प्रदेश द्वारा दैनिक वेतन भोगी बेलदार के पद पर दिनांक 1-1-1999 से प्रत्येक मास 15 दिन का सेवा व्यवधान ब्रेक करने की कार्यवाही उचित व न्यायोचित है यदि नहीं तो उपरोक्त कामगार नियोजक से किस पूर्व वेतन, वरिष्ठता, पूर्व लाभ सेवा लाभ, और राहत का पात्र है।”

2. In pursuance to the reference the petitioner avers that he was engaged as a daily paid unskilled worker by the respondents on 3rd of June, 1996 along with other similar situate persons. The respondent allowed the petitioner to work for 265 days in the year 1998 alone. The petitioner was offered work only for 15 days in all the months, except the year 1998. The other people who had been engaged along with the petitioner, namely Ajit Singh, Harish Kumar, Balwant, Shambhu Ram and Balvinder were never given any fictional breaks. All the aforesaid workers have since been regularized, ignoring the claim of the petitioner.

3. The petitioner approached the Hon'ble Administrative Tribunal against the arbitrary action of the respondent and in pursuance to the same after 1st of June, 2006 fictional breaks were not given to the petitioner. However, the earlier the act of the respondent in continuously giving fictional breaks has not been condoned by the respondent and the same is an act of unfair labour practice, further, being violative of the provisions of Section 25 F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has also claimed the amount of wages which were paid less to the petitioner on account of fictional breaks amounting to Rs.74025/-. The action of the respondent is stated to be in derogation to the provisions of the Article 14 of the Constitution of India. The petitioner thus claims the amount and the benefits of the illegality perpetuated by the respondent along with regularization thereof.

4. While contesting the claim the respondents inter alia averred that the reference was not maintainable as no cause of action accrued to the petitioner as he was employed temporarily and that he could not claim regularization as a matter of right, seeing to his status of a casual worker.

5. On merits it was not denied that the petitioner was not engaged w.e.f. 6/1996 along with other workers. It is admitted that the other workers have since been regularized as they have fulfilled the requirement of having worked for 240 days in each year continuously for 8 years. Since 2006 the petitioner is working continuously. Earlier there was lack of work and funds and as such he was appointed only for 15 days in a month.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 2.6.2008 the following issues came to be framed.

1. Whether the respondent has been given breaks in the petitioner's service for 15 days every month since 1.1.1999. . .OPP.

2. If the above issue 1 is proved, whether the breaks in the petitioner's service were unlawful. . .OPP.
3. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : Yes

Relief. : Allowed as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2.

9. Both the issues are being taken up together for discussion as they are co-related and intermingled.

10. The short and simple case of the petitioner is that the respondents had been resorting to giving fictional breaks to the workmen from the year 1999 as only muster-rolls for 14-15 days were issued to the petitioner.

11. The petitioner while reiterating the averments has deposed on similar lines that he was appointed only for a period of 15 days after January, 1999 every month. However after 6th of June, 2006 the respondents are offering muster rolls to him for the whole of the month. It is further deposed by the petitioner that the other workmen like Shambhu Ram, Ajit Singh, Harish Kumar, Balvinder Singh who had also been appointed in June, 1996 was offered muster rolls for the entire month and they have since been regularized by the respondents. The breaks in services have been given deliberately to the petitioner. He had approached the Hon'ble Administrative Tribunal vide O.A. No.169/06 and the Hon'ble Tribunal had directed the respondent not to give fictional breaks to him in the future. Thereafter he was offered muster roll for the entire month by the respondent. The cessation of work by the petitioner and that too for 15 days a month was thus attributable to the respondent alone.

12. The respondents on the other hand examined the Executive Engineer Shri Naresh Kumar Sehgal as RW1. He has placed on record the mandays chart of the petitioner as RW1/A and seniority list as RW1/B. It is not disputed that the petitioner still continues to work with the respondent. It was however the case of the respondent that he was engaged as per the availability of work and funds. There is however no whisper in this behalf in the deposition of the Executive Engineer who has appeared as RW1.

13. A bare glance at Ex. RW1/A the mandays chart shows that starting from February, 1999 till June, 2006 the petitioner was issued muster rolls only for 14-15 days. There is nothing on record to remotely suggest that the respondent department was constrained of funds or works and as such muster rolls were granted only for a limited period of 14-15 days. Admittedly the workmen who have joined after the petitioner i.e. Shambhu Ram (appointed on 20.6.1998), Balwant Chand (appointed on 10.7.996) and Balvinder Singh (appointed on 17.6.2006) were allowed to continue uninterruptedly and have since been even regularized. It is even admitted by the RW1 in his deposition.

14. Strangely why, how and under what circumstances the muster rolls were issued only for 14-15 days to the petitioner has not been spelt out by the respondent either in their pleadings or in their evidence. A faint plea was raised that there was lack of work and funds but the said fact has not been corroborated in the course of evidence of the respondent. Admittedly certain other similarly situated workmen were continuously granted muster rolls for the entire months. They all continued to work uninterruptedly for the whole of the month. The respondent thus were either resorting favouritism or acting in a partisan manner to one set of workmen or was simply resorting to such process with an object of depriving them of the status and privileges of a permanent workmen, entitling them to regularization, as per the policy of the State. It is an act of gross discrimination which is ex facie borne out from the record. There can be no two opinions about it. Mere glance at the record, more particularly RW1/a, high light the glaring discrepancy and discrimination perpetuated by the respondents.

15. The aforesaid action of the respondent as discussed above is not only an "unfair labour" practice as per the provision of Section 2 (r.a.), but is also against the provision of the 25-B of the act, which inter alia stipulates that the workmen shall be in continuous service", except because of an interruption on account of sickness authorized leave, accident, strike which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workmen. The action of the respondent in not intentionally issuing muster-roll for the entire month to the workmen was not due to any fault of the workmen. The cessation of work was caused due to the arbitrary, discriminatory attitude of the respondent. Thus it has to be presumed that the petitioner were in "continuous service", continued service uninterruptedly with the respondent from the inception of his service. The sole inference from the entire circumstances discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process

disengaging him after 14-15 days every month till June, 2006 was illegal and against the provision of the Industrial Disputes Act.

16. It is thus held that the petitioner was in continuous uninterrupted service with the respondent from the date of his engagement. The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service of the petitioner. His seniority shall be reckoned from his initial date of engagement. Consequently the petitioner shall be entitled to regularization from his initial date of engagement, though subject to the policy of the State.

RELIEF

17. For all the aforesaid reasons discussed above it is thus held that the petitioner was in continuous uninterrupted service with the respondents from his date of engagement. The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service of the petitioner. His seniority shall be reckoned from his initial date of engagement. It further goes without saying that the petitioner shall be entitled to regularization from his initial date of engagement, though subject to the policy of the State. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 1st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal cum 786
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 314/2009

Date of Institution : 30.5.2009

Date of decision : 2.7.2010

Shri Desh Raj S/o Shri Daggu, R/o Village Saraskana, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Desh Raj S/o Shri Daggu, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on December, 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner

alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the petition is not maintainable, as alleged. . .OPR.
3. Whether the petition suffers from the vice of delay and laches. . .OPR.
4. Whether the petitioner is guilty of suppressio veri. . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. . .OPR.
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.

Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on December, 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.* Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the

rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing cum Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1319/07-381, dated 29.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated March 10, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 31/2006
Instituted on : 20.3.2006
Decided on : 28.8.2010.

Shri Desh Raj S/o Late Shri Prem Singh, R/o Village Kothi, P.O. Kadiayar, Tehsil Joginder Nagar, Distt. Mandi, H.P.Petitioner.

Vs

Executive Engineer, HPSEB(E) Division, Joginder Nagar, District Mandi, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. J.S. Chauhan, Adv.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether the termination of services of Shri Desh Raj S/o late Shri Prem Singh workman by the Executive Engineer, HPSEB(E) Division, Joginder Nagar , District Mandi, H.P. w.e.f. 25.5.1998 without complying the provisions of the Industrial Disputes Act, 1947 and Rule 14(2) of the Certified Standing Orders of the board is proper and justified? If not what relief of service benefits and compensation the above aggrieved workman is entitled to?”

2. Briefly the case set out by the petitioner in the statement of claim is that he was engaged as a daily wager by the respondent board on 25.5.1993 and his services were illegally dispensed with on 25.5.1998 without complying the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and against the provisions of the Standing Orders of the Board. No notice was issued to the petitioner and he was terminated verbally.

3. It is further the case of the petitioner that while terminating his services the respondents have retained many juniors namely Molak Ram, Om Chand, Dalip Singh, Damodar Dass and Vijay Kumar etc. They have been allowed to complete 240 days whereas the petitioner was terminated illegally. Initially the petitioner had filed an original application bearing No. OA (M) 439/1999 before the Hon'ble Administrative Tribunal which was dismissed for want of jurisdiction. Thereafter the petitioner was constrained to raise an industrial dispute. The petitioner thus seeks his reengagement with all consequential benefits.

4. While contesting the claim the respondents have inter alia raised the preliminary objections vis-à-vis maintainability, limitation, misjoinder of necessary parties, estoppel and the board being exempted from the operations of the Standing Orders.

5. On merits it is the case of the respondent that the petitioner was engaged initially as a daily wager on 25.5.1993. He worked with the respondent till 24.9.1993, against the work which was casual in nature. The petitioner thereafter abandoned job on his own. He was again re-engaged on 25.5.1995 and he continued as such till 24.7.1995.

Thereafter he again left the job of his own sweet will. In the third spell the petitioner worked with the respondent from 25.12.1997 to 24.5.1998. He again left the job of his own sweet will. The petitioner has never completed 240 days in any of the years. The respondent had never terminated the services of the petitioner rather he abandoned the job of his own will every time he was engaged by the respondent.

6. The board is stated to be exempted from the provisions of the Industrial Employment (Standing Orders) Act, 1946 w.e.f. 11.9.1985.

7. As far as the retention of the juniors is concerned it is averred by the respondent that they were also terminated on completion of the work against which they were engaged but managed to get re-engaged by filing cases before the Hon'ble Administrative Tribunal.

8. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated the stand taken in the statement of claim.

9. I notice that on 25.7.2008 the following issues came to be framed by my Id. predecessor:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . .OPP.
2. Whether the petitioner's services were never terminated by the respondent, but he left the job on his own. . . .OPR.
3. Whether the petitioner is estopped from filing of the claim petition of his act and conduct. . .OPR
4. Whether the claim petition suffers from the vice of delay and laches. . .OPR.
5. Whether the claim petition is bad and not maintainable as alleged. . .OPR.
6. Relief.

10. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue-wise findings may be returned thus:-

Issue No. 1 :	Yes
Issue No.2 :	No
Issue No.3 :	No
Issue No.4 :	No
Issue No.5 :	No
Relief. :	Allowed as per the operative part of the award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

11. Both the issues are being taken up together for discussion as they are co-related and intermingled.

12. The short and simple controversy is regarding the non-compliance of the provisions of Section 25-G of the Industrial Disputes Act and the Standing Orders of the Board. Though the respondent board claims that after 11.9.1985 the respondent board was exempted from the provisions of the Standing Orders. However, no documents have been placed on record to substantiate the same.

13. The main dispute thereupon hinges upon the retention of the persons junior to the petitioner namely one Molak Ram, Om Chand, Dalip Singh, Damodar Dass, Vijay Kumar etc.. From the mandays chart on record (Ex.RW1/A) it is apparent that the petitioner had not completed 240 days in the preceding 12 months of his termination. He was indeed not entitled to the protection of the provisions of Section 25-F of the Act.

14. As far as the question of the retention of the juniors is concerned it is the pleaded case of the respondent that they had been allowed to work in pursuance to some orders passed by the Hon'ble Administrative Tribunal. No such orders have been placed on record by the respondent. The petitioner has named about 5 peoples in the petition and his affidavit by way of evidence and even the orders in respect of re-engagement of any one of them have not been placed on record. The respondents have also not placed on record any seniority list to impeach the claim made by the petitioner that the said five workmen were junior to him. If nothing else atleast their respective dates of appointed could have been gathered by the Court from the seniority list. The withholding of the most important piece of evidence thus goads me to raise an inference that the said workmen were junior to the petitioner. Their respective dates of appointment have neither been pleaded nor highlighted by RW1, the Sub Divisional Officer who has appeared on behalf of the board as a witness. It is thus to be inferred that the said workmen were indeed junior to the petitioner.

15. The plea of abandonment has been raised by the respondent and it has been further contended that no notice was required to be issued while terminating the services of the petitioner.

16. Admittedly no notice is stated to have been served on the petitioner before his termination as per the requirement of provisions of Section 25-F. For, it is the case of the respondent that the petitioner had abandoned job. Except for a bald statement of RW1 that the petitioner had left job on his own, there is nothing on record to remotely show that the petitioner had abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent.

17. Seeing to the totality of the mandays chart, no doubt the petitioner had not completed 240 days in the preceding 12 months of his termination and as such the provision of Section 25-F may not come to the rescue of the petitioner. However, it is more than apparent that the respondent had failed to prove the plea of abandonment. There is nothing on record that the petitioner had abandoned the job after 1-3-2001. The disengagement of the petitioner thus has to come within the ambit of "retrenchment". That being so, the respondent was duty bound to have followed the provisions of Section 25-G of the Act. It was not done in the present case. Moreover, it may be noticed at this juncture that the requirements of 240 days is not a condition precedent for the applicability of Section 25-G. Even if the workman has not completed 240 days, he was entitled to the protection of the section 25-G and 25-H. Thus the petitioner in any case was entitled to the aforesaid protection. While terminating the petitioner the respondent thus had to retrench the last persons to be engaged. It was admittedly not done in the present case. Not only this, in fact the respondent has engaged a fresh hands after the termination of the petitioner. While resorting to retrenchment it was this person who had to go first of all. Thus the respondent had violated the provisions of section 25-G and as such action of the respondent is unsustainable in the eyes of law. Moreover the plea of abandonment sought to be raised has not been substantiated in any way, as is clear from the discussion held hereinabove.

ISSUE NO.3

18. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

ISSUE NO. 4

19. As is apparent from the pleadings and evidence on record the petitioner had first approached the Hon'ble Administrative Tribunal vide OA (M) 439/1999. The same came to be dismissed for want of jurisdiction on 26.2.2002. As is clear from the demand notice the petitioner had raised an industrial dispute thereupon which was referred to the appropriate Government on 26.2.2004. There is no implicit delay in raising the dispute. The petitioner had approached the wrong forum and immediately thereupon raised the dispute. Though strictly speaking the provisions of limitation Act do not apply in the present proceeding and nor is there any inherent limitation prescribed for raising a dispute of this nature. Even assuming it had been so the petitioner would have been entitled to the exclusion of time for having proceeded in a Court without jurisdiction. Be it as it may, the fact remains that it cannot be said that the petitioner had raised the dispute which was stale. Consequently the issue is decided against the respondent and in favour of the petitioner.

ISSUE NO. 5

20. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

21. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner w.e.f. 25.5.1998 is set aside and quashed. He is directed to be reengaged forth with. The petitioner shall however not be entitled to seniority or back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 52/2008
Date of Institution : 22.2.2008
Date of decision : 1.10.2010

Shri Dharam Pal S/o Shri Goverdhan, R/o Village Bhanecha, P.O. Balag, Sub Tehsil Nihri, Distt. Mandi, H.P.
Petitioner

Versus

The Executive Engineer, I&PH Division Karsog, Distt. Mandi, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether transfer of services of Mr. Dharam Pal S/o Shri Goverdhan by the Executive Engineer, IPH Division Karsog, Distt. Mandi, (H.P.) to the Executive Engineer, IPH Division Sunder Nagar, Distt. Mandi (H.P.) through verbal orders, thereby resulting in subsequent termination, w.e.f. 1.11.2000, while his juniors have been kept, is legal and justified? If not what amount of due wages, arrears of back wages, seniority past service benefits and compensation the above workman is entitled to?”

2. The case set up by the petitioner is that he had come to be appointed as a daily wager by the respondent in I&PH Sub Division Nihri, District Mandi on September, 1998 along with other workmen including one Shri Naresh Kumar WI, Parkash Chand Fitter and Khem Raj Beldar. He continued to work as such till 31.10.2000 and in between the respondent had given fictional breaks to the petitioner. His services came to be verbally dispensed with on 1.11.2000 and that too without any prior notice, charge sheet or compensation.

3. During the course of conciliation it had come to the notice of the petitioner that his services had been transferred by the department from I&PH Sub Division Nihri to I&PH Sub Division Sunder Nagar. However no transfer order dated 20.9.2000 had been received by him. The petitioner had completed 235 days w.e.f. 1.1.2000 to 31.8.2000 despite fictional breaks given to him. However the department had terminated his services intentionally and deliberately so as not to allow him to complete 240 days. One Brij Lal S/o Damodar Dass who was also working at Nihri at the relevant time was neither transferred nor his services were dispensed with by the respondent.

4. It is further the case of the petitioner that the respondents have retained persons junior to him like one Gokal Ram and Keshav Ram and as such violated the principle of ‘last come first go’ as envisaged under section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The respondents have also resorted to fresh recruitment and as such even violated the provisions of Section 25-H of the Act.

5. The petitioner had initially approached the Hon’ble Administrative Tribunal in respect of his illegal termination vide O.A. No.1077/2001 but the same was dismissed for want of jurisdiction, with liberty to the petitioner to approach the competent forum and thereupon he had raised the industrial dispute on 15.6.2006.

6. The termination of the petitioner was further stated to be in violation of the provisions of Section 25-N and was also in violation of the provisions of Section 25-T and 25-U of the Act. The petitioner thus prays that his termination be set aside and quashed. He be reinstated in service along with backwages and all consequential benefits.

7. While contesting the claim the respondent inter alia raised the preliminary objections vis-à-vis maintainability, non-joinder of parties, limitation and the termination of the petitioner being not within the definition of the "retrenchment", as the petitioner had reportedly abandoned work of his own. The administrative control of G.P. Bandli and Balag along with scheme had been transferred to the I&PH Division Sunder Nagar and the petitioner did not join for work in the I&PH Division Sunder Nagar and thereupon abandoned job.

8. On merits it is the case of the respondents that the petitioner did work with them till 31.10.2000, but it was intermittent in nature. The respondents never gave any fictional breaks to the petitioner. His services were never terminated, rather he left the job of his own sweet will.

9. It is further the case of the respondent that the administrative control of G.P. Bandli and Balag was transferred from I&PH Division Karsog to I&PH Division Sunder Nagar. In the present case no transfer had been made, but the petitioner was also shifted to I&PH Sub Division, Sunder Nagar, because the scheme on which he was working had also been transferred to I&PH Division Sunder Nagar. Theoretically and practically the petitioner was to work on the same scheme, but the petitioner had not reported for duty on the said scheme. It is thus prayed by the respondent that the petitioner is not entitled for any relief.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 17.2.2009 the following issues came to be framed by my Ld. Predecessor.

1. Whether the services of the petitioner were terminated by the respondent on 1.11.2000. . .OPP.
2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent was unlawful? . .OPP.
3. Whether the petitioner was engaged by the respondent in a specific scheme, which was later transferred to I&PH Division, Sunder Nagar, and the petitioner was shifted to that Division. . .OPR.
4. Whether on being shifted to I&PH Division Sunder Nagar, the petitioner did not report for duty in that Division and thus abandoned the job on his own. . .OPR.
5. Whether the petition suffers from the vice of delay and laches. . .OPR.
6. Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 :	Yes
Issue No.2 :	As per operative part of the award.
Issue No.3 :	No
Issue No.4 :	No
Issue No.5 :	No
Relief. :	Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1, 2, 3 and 4.

13. All the four issues are being taken up together for discussion as they are co-related and intermingled.

14. The petitioner's claim simplicitor is that his services were terminated on 1.11.2000 verbally and without any notice. On the contrary it is the stand of the respondent that the administrative control of G.P. Bandli and Balag had been transferred to I&PH Division, Sunder Nagar and the petitioner had been directed to report for duty in I&PH Division Sunder Nagar along with the scheme. He failed to do so and as such abandoned job of his own.

15. The case of the respondent thus of abandonment while the petitioner claimed that his services were terminated illegally. The petitioner in furtherance of his case has appeared as his own witness. He had further placed on record an office order dated 20.9.2000 whereby the administrative control of G.P. Bandli and Balag Division (Ex. PW1/B) has been transferred to I&PH Sub Division Sunder Nagar, his mandays Ex. PW1/C and the details of the workmen who were alleged to be transferred from I&PH Division Karsog to I&PH Division Sunder Nagar Ex. PW1/D. The respondents on the other hand have examined the Executive Engineer Sh. V.D. Kanwar as RW1. He has reiterated the stand taken by the respondents that the administrative control of G.P. Bandli and Balag was transferred to I&PH Division Sunder Nagar on 20.9.2000 but the petitioner did not report for duty on the scheme. Brij Lal S/o Shri

Damodar Dass is still working in I&PH Sub Division Nihri whereas the petitioner left job at his own sweet will. Such abandonment would not fall within the definition of the "retrenchment".

16. The respondents have not produced anything on record to show that the services of the petitioner had been transferred to I&PH Division Sunder Nagar along with some scheme. No documentary evidence has been placed on record in this behalf. There is no iota of evidence to remotely show that the petitioner had been informed of the change of his service conditions or that he was to report for duty at I&PH Division Sunder Nagar. The petitioner has placed on record Ex. PW1/B, which is an office order showing that the administrative control of the work falling in G.P. Bandli and Balag was transferred to I&PH Sub Division Sunder Nagar. It also does not show that some scheme was transferred to I&PH Division Sunder Nagar. In fact some part of the area earlier following in I&PH Sub Division Nihri was transferred to I&PH Sub Division Sunder Nagar. It is not that a scheme had been transferred from one Sub Division to other. The plea of the respondents that the petitioner was engaged for a specific scheme, which itself was transferred to I&PH Sub Division Sunder Nagar is thus fallacious and not worthy of credence. Even for the sake of arguments if it is believed that the scheme was transferred as is the case of the respondent but there is no evidence on record remotely suggesting that the services of the petitioner were also transferred to the I&PH Sub Division Sunder Nagar or he was ever asked to report for duty in the new Sub Division. RW1 Shri V.B. Kanwar has also feigned ignorance whether a list of workmen was given to the I&PH Sub Division Sunder Nagar of the erstwhile workers working in Bandli and Balag. Admittedly no explanation was sought from the petitioner regarding his abandonment.

17. Even if it is to be assumed that the petitioner was to go with the scheme, apparently no notice of change as is contemplated under Section 9-A of the Industrial Disputes Act was ever given to the petitioner. The fact of non compliance of the provisions of Section 9-A of the Act would render the change in condition of service void ab initio. As far as the question of abandonment is concerned, it is now well settled that the plea of abandonment has to be proved as a question of fact. There is no evidence on record to prove so. Moreover, since the said plea is itself contradicted by the respondents themselves that it was a transfer of the scheme to I&PH Sub Division, Sunder Nagar, it cannot be taken at its face value. I am afraid the plea of abandonment is also not sustainable in these circumstances.

18. It is thus to be held that the petitioner was neither engaged in a specific scheme nor any scheme had been transferred to I&PH Sub Division Sunder Nagar. The petitioner too was never shifted along with the scheme and thereupon had not even abandoned job. The services of the petitioner came to be terminated by the respondent in the most illegal manner, being in derogation to the mandatory provisions of the Industrial Disputes Act. His termination was not only in violation of the provisions of Section 25-F but also was a result of an unfair labour practice. It was also in violation of the provisions of Section 9-A of the Act. The termination of the petitioner was thus arbitrary and illegal.

19. Consequently for all the aforesaid reasons, the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination. In the peculiar facts and circumstances of the case the petitioner is not held entitled to any backwages.

ISSUE No. 5

20. The provisions of the limitation Act do not strictly apply to the dispute arising under the Act. Nonetheless the claim may be categorized to be a stale claim, if the right of workmen has become stale or died its own death. In the case in hand, immediately after his termination the petitioner had approached to the Hon'ble Administrative Tribunal vide O.A. No.1077/2001 for the redressal of his grievances. The said original application came to be dismissed on the point of jurisdiction with liberty to approach the appropriate authority under the provisions of the Act. At the best it was a choice of the wrong forum. Thereafter the petitioner took recourse to the provisions of the Act. It cannot be said that the claim preferred by the petitioner was stale.

21. Even if the provision of the limitation Act had been applicable the petitioner would have got allowance for having approached a wrong forum. Thus it cannot be said that the petitioner would have lost the right and the remedy because of the wrong choice of forum. Issue is accordingly decided against the respondent.

RELIEF

22. For all the aforesaid reasons discussed above the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination, though except backwages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 1st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 74/2005
Date of Institution : 1-6-2005
Date of decision : 1-7-2010

Sh. Dharam Singh s/o Sh. Haru Ram, Vill. Darvehed, P.O. Rajwari Tehsil Sadar Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPSEB Division Gohar, District Mandi, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bimal Sharma, adv.

For the Respondent : Sh. Abhishek Lakhanpal, adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Dharam Singh s/o Sh. Haru Ram workman by the Executive Engineer, HPSEB Division, Gohar, District Mandi, H.P. w.e.f. 16-3-2000 without complying the provisions of the Industrial Disputes Act, 1947 and the Certified Standing Orders of the board, whereas junior to him are retained by the board as alleged by the workman is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”

2. The case set up by the petitioner in the statement of claim is that he was appointed as a beldar w.e.f. 20-1-1984 and he continued to work as such on 25-2-1998. His services were thereupon terminated without any notice, illegally.

3. The petitioner approached the respondent time and again requesting for his reengagement. He came to be reengaged. He worked as such till 12-3-2000 when his service was again terminated without any notice.

4. It is further the case of the petitioner that the respondent had retained persons juniors to him while ordering his termination, namely Gulab Chand, Yog Raj, Bitu Ram, Pankaj Raj, Om Parkash, Naval Kishor and one Yashodan, Dina Nath and Duni Chand. The respondent thus was stated to have not followed the principle of “ Last Come First Go” and as such the termination was bad , being violative of even section 25-G and 25-H of the Act. The petitioner thus sought his reinstatement with all consequential benefit.

5. While disputing the averment of the petitioner the respondent interalia raised the preliminary objection vis-à-vis limitation and maintainability It is also averred by the respondent that vide a notification dated 11-9-1985 the Electricity board has been exempted from the operation of the Standing orders notified by the board. However on merit it is the case of the respondent that the petitioner was engaged as a dailywaged beldar on 20-1-1984 and he worked as such up till 25-2-1998 with long spells of willful interruption/ breaks . After 25-2-1998 the petitioner was not on the rolls of the respondent. On 16-2-2000 when the work of restoration of electric supply was required to be done, the petitioner was again called for work. It had been made clear to the petitioner that the work was specific in nature and was engaged for a short duration. On the completion of that specific work the engagement of the petitioner came to an end automatically and as such no notice was required to be served upon him.

6. It is further averred by the respondent that 16 temporary workmen who were already working in the Electrical Sub Division Padhar were deputed by the competent authority to meet the urgent requirements in Pandoh Sub Division vide order annexure RA-III and these 16 workmen has since been deputed back to their sub Division

Padhar on 25-4-2000. The petitioner cannot claim any preference over these workmen because he has stopped work since 26-2-1998. In respect to other juniors namely Sh. Yashodan, Dina Nath and Duni Chand. it is submitted by the respondent that they were junior to the petitioner. They being senior and having completed more than 240 days continuous service now stands regularized by the Board. The name of the petitioner is still existing in the seniority list of casual workers for the division and as when work would be available he would be reengaged on the basis of seniority.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that the following issues come to be framed on 15-7-2006 by my Ld. Predecessor.

1. Whether the disengagement from the service of the claimant is accordance with law?OPP.
2. If the above issue is affirmative to what relief to the claimant is entitled to?OPP.
3. Whether the reference is stale claim, hence not maintainable? ...OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

- | | |
|-------------|---|
| Issue No. 1 | No |
| Issue No.2 | Yes as held herein below. |
| Issue No.3 | No |
| Issue No.4 | Allowed as per the operative part of the Award. |

REASONS FOR FINDINGS

ISSUE No. 1 & 2.

10. Both the issues are being taken up together for discussion as they are co-related and intermingled:

11. The short and simple case set up by the petitioner is that his termination w.e.f. 16-3-2000 is violative of the provision of the Act, more particularly 25-F and 25-G and of the standing order framed by the respondent board. The respondent is further stated to have retained persons juniors to the petitioner while terminating his services and had thereby violated section 25-G of the Act. On the contrary it is pleaded by the respondent that the petitioner had never completed 240 days in any calendar year and had rather abandoned the job on his own. He was never terminated and as such the violation of the section 25-F or the standing orders does not arise at all. As far as the principle of "Last Come First Go" is concerned there is no categorical denial by the respondent in this behalf. In generalized terms the said fact is rather admitted by the respondent. Per the respondent the petitioner had been reengaged on 16-2-2000 for a specific work for a short term on the basis of his seniority and the reengagement of the petitioner had automatically came to an end thereupon.

12. The petitioner while appearing as his own witness has reiterated the fact that his service were dispensed with illegally while retaining his juniors and that too by allowing them to complete 240 days in each calendar year. The petitioner in his cross-examination has further reiterated that the respondents have retained a few persons namely Gulab Chand, Yog Raj, Bitu Ram, Pankaj Raj, Om Parkash, Naval Kishor and one Yashodan, Dina Nath and Duni Chand. who were junior to him.

13. It is no doubt true that the respondent has placed on record one letter dated 16-2-2000 where in the petitioner had been directed to report for duty for 15 days in respect of maintenance of electric supply vide Ex.RW1/A but the record shows about 16 workmen had been brought from the electrical sub-Division Padhar, who had been disengaged their, as is clear from Ex. RW1/C on record. They continued to work in electrical sub-Division Pandoh till 25-4-2000 as is clear from Ex. RW1/B. They were directed to report back to duty on 26-4-2000 at HPSEB Padhar. Not only this the perusal of the seniority list Ex. RW1/E shows that there are numerable workmen who have been appointed after the petitioner. Admittedly he was engaged initially in the year 1984. There are number of workmen who have been appointed subsequently. Some of them having been appointed even as far back as in the year 1998.

14. The respondent's witness RW1 Nageshwar Dutt Walia though has deposed that the petitioner had abandoned the job on 26-2-1998 and thereafter he was recalled vide latter dated 16-2-2000 but apart from the bald statement of the said witness, there is nothing on record to remotely show that the petitioner had abandoned the job in the year 1998. Admittedly per him no show cause notice or letter was issued to the petitioner to explain his willful absence. The witness in fact came to be posted in the area some where in the year 2008. He has no personal knowledge about the petitioner the having abandoned the job, in any documentary evidence having placed on record in his behalf. Over and apart the petitioner had been recalled on 16-2-2000.

15. Seeing to the mandays chart, no doubt the petitioner had not completed 240 days in the preceding 12 months of his termination and as such the provision of Section 25-F may not come to the rescue of the petitioner. However, it is more than apparent that the respondent had failed to prove the plea of abandonment. There is nothing on record that the petitioner had abandoned the job after 16-3-2000. The disengagement of the petitioner thus has to come within the ambit of "retrenchment". That being so, the respondent was duty bound to have followed the provisions of Section 25-G of the Act. It was not done in the present case. Moreover, it may be noticed at this juncture that the requirements of 240 days is not a condition precedent for the applicability of Section 25-G. Even if the workman has not completed 240 days, he will be entitled to the protection of the section 25-G and 25-H. Thus the petitioner in any case was entitled to the aforesaid protection. While terminating the petitioner the respondent thus had to retrench the last persons to be engaged. It was admittedly not done in the present case. Not only this, in fact the respondent has engaged a fresh hand as far back as 1998. While resorting to retrenchment it was those person who had to go first of all. Thus the respondent had violated the provisions of section 25-G and as such action of the respondent is unsustainable in the eyes of law. Moreover the plea of abandonment sought to be raised has not been substantiated in any way, as is clear from the discussion held hereinabove.

16. The foregoing issues are accordingly decided partly in favour of the petitioner.

Issue No. 3

17. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent. 18. The materials on record are indicative of the petitioner having approached the respondent from time to time after his retrenchment and requested for his re-engagement but to no avail. Left with no option, he later raised an industrial dispute which came to be referred to this Court for adjudication under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) I.D./05-Mandi dated 16 May, 2005.

19. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

" While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years....."

20. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate. In view of the facts and circumstances of this case, the principle of delay and laches cannot be held applicable to his case. The issue under discussion is therefore held in his favour and against the respondent.

RELIEF

21. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner w.e.f. 16-3-2000 is set aside and quashed. He is directed to be reengaged forth with. The petitioner however shall not be entitled to seniority and back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 1st day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal cum
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 144/2003

Instituted on : 25.4.2003

Decided on : 16.7.2010.

Shri Dhogri Ram S/o Shri Gosaun Ram, R/o Village Darat Bagla, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P.Petitioner.

Vs

Executive Engineer, HPPWD Division Joginder Nagar, Distt. Mandi, H.,P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“क्या अधिशासी अभियन्ता, हिमाचल प्रदेश लोक निर्माण विभाग, मण्डल जोगिन्दरनगर जिला मण्डी, हिमाचल प्रदेश द्वारा श्री धोगरी राम पुत्र श्री गुसाउं राम की वर्ष 1998 से औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ की पालना किये बिना, सेवा समाप्त करना वैध है अथवा अवैध। यदि अवैध है तो श्री धोगरी राम किस राहत व क्षतिपूर्ति का हकदार है।”

2. The case set up by the petitioner is that he had been engaged as a beldar by the respondent in sub division Joginder Nagar in the year 1981. He continued working as such till the year 1998.

3. As per the petitioner he had worked as such on Majharnoo, Yora, Dehlu, Banai, Darat, Machyal and NH section Dehlu. He had completed more than 240 days in each calendar year and at times had been given break due to non availability of funds and work. His services were illegally terminated in the year 1998 without any charge-sheet, inquiry, notice or retrenchment compensation. It was stated to be in violation of the provisions of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act).

4. It is further the case of the petitioner that the respondent had also violated the principle of ‘Last come first go’ while dispensing his services, as juniors to him were retained by the respondent namely Madho Ram, Roop Chand, Roop Lal, Shakuntla Devi etc. . Fresh hands were also stated to have been employed after his termination. The petitioner thus sought his reinstatement with full back-wages and other consequential benefits.

5. While contesting the claim set up by the petitioner the respondent admitted that the petitioner was engaged as daily waged beldar in March, 1993, however per them he has worked with the respondent only till December, 1995. After that the petitioner is stated to have been left his job. The petitioner was never stated to have completed 240 days in any of the calendar year. The petitioner is stated to have left the job himself in December, 1995 and as such there was no question of his services having been terminated.

6. On 30.4.2005 the following issues were framed by my Ld. Predecessor for determination:

1. Whether the petitioner was disengaged by the respondent w.e.f. 1998 in violation of the mandatory requirements of Section 25-F of the I.D. Act, 1947 was in an illegal and unjustified manner? . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits and amount of compensation the petitioner is entitled to? . .OPP.
3. Whether the petitioner left the job himself and he was not retrenched? If so, its effect . .OPR.
4. Relief.

7. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue-wise findings may be returned thus:-

Issue No.1 :	Yes
Issue No.2 :	As detailed in the operative part of the award
Issue No.3 :	No
Relief :	Allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 and 3

8. All the three issues are being taken up together for discussion as they are interrelated and intermingled.

9. The case of the petitioner is that his services have been illegally terminated, without any notice or retrenchment compensation and as such in violative of the provisions of Section 25-F of the Act. On the contrary it is the assertion of the respondent that the petitioner in fact abandoned job in December, 1995 and thereafter never resumed his job. Having left as far back as 1995 there was no question of his service being terminated by the respondent.

10. In order to substantiate his claim the petitioner has appeared as own witness as PW1. He has reiterated the stand taken in the claim. He further deposed that he filed the case before the Hon'ble Administrative Tribunal at Shimla in the year 1999. He however deposed that the persons junior to him namely Chuhan Singh, Barghi Ram, Sanichru Ram, Geeta Devi, Madan Lal, Jagdish Chand, Rajesh Kumar, Durgi Devi, Mathura Devi etc. have still being retained after his services had been terminated. The petitioner has further deposed that the respondent had appointed more than 100 workmen afresh on daily wages w.e.f. 1998, 1999 to the year 2004. However, the petitioner was never afforded any opportunity to resume work.

11. On the other hand the Executive Engineer Sh. P.C. Katoch has appeared as RW1. He has deposed that the petitioner had worked with the respondent w.e.f. March, 1993 till December, 1995 and thereupon he had left job on his own. He has also placed on record the mandays chart of the petitioner vide Ex.RW1/A. Further per him the petitioner had never completed 240 days in any calendar year. As per the witness no notice is required to be issued when a person leaves job on his own, nor a daily wagger is required to be offered any opportunity for re-engagement. Further per him neither was the petitioner recalled for work nor any notice had been issued to him. Further per him no list has been placed on record to substantiate the principle of 'last come first go'.

12. The records have been produced at the time of arguments by Sh. Devinder Kumar, JE, Joginder Nagar. He has produced the muster rolls of the petitioner till December, 1995. Per him the muster rolls after December, 1995 were not traceable as such could not be produced before this Court.

13. As is the case of the respondent that the petitioner had left job on his own in December, 1995, but there is no documentary evidence on record to substantiate the said plea, except the bald statement of the Executive Engineer who has appeared as RW1. Even per him no notice was required to be issued after the petitioner had abandoned job. Thus it is quite clear that no notice had been served on the petitioner to resume job, failing which his services shall be terminated. No explanation was sought regarding his willful absence from work. It is thus difficult to infer that the petitioner had willfully abandoned job. The said inference is further corroborated by the fact that the muster rolls of the petitioner are not traceable after December, 1995. Had the muster rolls been placed on record it would have been evident as to under what circumstances the petitioner's name disappeared from the rolls i.e. whether it was due to absence or his name had been struck off voluntarily by the respondent. Having failed to produce the same even otherwise an inference can should be drawn against the respondent.

14. Not only this the respondent has also failed to place on record the seniority list. The petitioner had categorically pleaded and even discharged his initial onus by deposing that certain juniors to him have been retained and as such his dis-engagement was against the principle of Section 25-G of the Act. Not only this there is categorical deposition of PW1 that innumerable beldars had been appointed by the respondent between 1998 and 2004. Neither the petitioner has been cross-examined in this behalf nor any explanation come forth on this point. So much so the respondent has not even bothered to place on record the seniority list, to deny the said fact.

15. It is by now well settled that for the invocation of the rights provided under Section 25-G and 25-H of the Industrial Disputes Act the requirement of having completed 240 days of "continuous service" in one year as required under Section 25-F is not a condition precedent, as has been held by the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam and Ors. (1996 5 SCC 419). Even the provisions of Section 25-H is capable of being applied to all retrenched workmen, not merely those covered by Section 25-F. No such steps have been taken by the respondent. In fact, according to the RW1 it was not even required to be done. Apparently the Executive Engineer

himself was not aware of the statutory provisions of the Act and that in law it is incumbent to seek an explanation for the willful absence of a workman.

16. For all the reasons discussed above it is thus inferred that the petitioner had not left the job himself. He had been retrenched. Admittedly no notice had been issued to the petitioner whether under Section 25-F or in respect of abandonment. The action of the respondent thus has to be held to be in violation of the mandatory provisions of Section 25-F. Not only this, the respondent has also violated the provisions of Sections 25-G and 25-H of the Act. Consequently the termination of the petitioner is illegal. It is accordingly set aside. The respondent is directed to re-engage the petitioner w.e.f. the year 1998 when he was illegally terminated.

17. It however transpires from the record that the petitioner has completed the age of superannuation, having attained 60 years of age. Since the petitioner had not raised the dispute well within time and has also attained the age of superannuation in the meanwhile it would be worthwhile that in place of ordering the re-engagement of the petitioners, the respondent is burdened with compensation. In these peculiar facts and circumstances discussed above in place of ordering the re-engagement of the petitioner the respondent is directed to pay compensation amounting to Rs.100000/-. The amount has been fixed keeping in view the compensation which would have been payable for the last 10 years even if 25% back wages had been awarded to the petitioner.

RELIEF

18. For the foregoing reasons discussed hereinabove while setting aside the termination of the workman Dhogri Ram, the respondent is burdened with compensation for having violated the mandatory provisions of the Industrial Disputes Act and accordingly the petitioner is held entitled to compensation amounting to Rs.100000/-. The reference is answered accordingly. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 16th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 352/2008
Instituted on : 13.6.2008
Decided on: : 5.7.2010

Smt. Geeta Devi W/o Shri Milkhi Ram, R/o Village Dhagwani, P.O. Khouda, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Geeta Devi W/o Shri Milkhi Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent no.3 on 6.2.1999 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the petition is not maintainable, as alleged. . .OPR.
3. Whether the petition suffers from the vice of delay and laches. . .OPR.
4. Whether the petitioner is guilty of suppressio veri. . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. . .OPR.
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO. 1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

- "25B. *Definition of continuous service.* For the purposes of this Chapter,-
- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
 - (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 6.2.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.* □ Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred "*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*" There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1814, dated 11.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not

suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 30/2006
Date of Institution : 20.3.2006
Date of decision : 20.9.2010

The General Secretary, Himshakati PWD Karamchari Sangh c/o Sh. N.L. Kaundal, Village Balakrupi, Tehsil Jogindernagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD, (N.H.) Division, Joginder Nagar, District Mandi, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the demand raised by the General Secretary, Himshakati P.W.D. Karamchari Sangh c/o Sh. N.L. Kaundal, Balakrupi, Tehsil Joginder Nagar through their demand notice dated 0109-2003 (copy enclosed) from the Executive Engineer, H.P.P.W.D. (N.H.) Division, Joginder Nagar, District Mandi, H.P. is proper and justified? If yes, what relief of service benefits the affected workmen are entitled to?”

2. In pursuance to the reference the Union has averred in the statement of claim that the workmen namely S/Sh. Om Parkash, Amar Singh, Rajesh Kumar, Khem Chand, Hamid Khan, Biri Singh, Pardhan Singh, Bhuri Singh, Khazan Singh, Bhagi Rath, Jai Ram, Piar Chand and Jagdish Chand had been working with the respondent as daily waged beldar since the year 1998-99 in HPPWD, Sub-Division Lad Barol.

3. It is the primary grouse of the union that only muster-roll for 15 days were issued to the workmen. Their services conditions were changed by the respondent Board in violation of the principle of Section 9-A of the Industrial Disputes Act (hereinafter to be referred to as the Act). It is further averred that certain juniors like Daler Khen, Sansar Chand, Kartar Singh & others mentioned in the para 4 of the statement of claim who had been engaged after the year 1999 were allowed to complete 240 days in all the calendar year, whereas the above named 13 workmen were given artificial breaks in order to deprive them of the benefits of regularization. The act of the respondent was unjustified, arbitrary and an unfair labour practice, as per the provision of the Act. The respondent had ample funds and work at their disposal, still the respondent resorted to an "unfair labour" practice of only issuing muster rolls for 15 days to the workmen. The union had raised the demand for regular muster rolls with the respondent, but to no avail and hence the present reference.

4. The union thus prays that the workmen be treated in continuous service from the date of their respective engagement. The fictional breaks be considered a part of their continuous service and the workmen be paid full wages from the respective dates of their appointment along with continuity of service.

5. While contesting the claim the respondent averred that the Division had started functioning w.e.f. Feb., 2004. They admitted the respective dates of appointment of the 13 workmen and also appended their respective mandays chart as annexure R1 to R13 along with the reply. Over and apart nothing has been averred as to why muster-rolls were issued to the workmen only for 15 days in a month.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 24.4.2010 the following issues came to be framed.

1. Whether the action of the respondent in giving fictional breaks to the workman and in the process disengaging them after 15 or 16 days, as alleged, is illegal and against the provisions of the Industrial Disputes Act, 1947 ...OPP.
2. If issue 1 is decided in affirmative to what relief, the petitioner is entitled to?OPP.
3. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No.2 : Yes
 Relief. : Allowed as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2.

9. Both the issues are being taken up together for discussion as they are co-related and intermingled.

10. The short and simple case of the petitioner union is that the respondents had been resorting to giving fictional breaks to the workmen from the year 1998-99 as only muster-rolls for 14-15 days were issued to the 13 workmen mentioned in the charter of demand.

11. In this behalf the petitioners have examined one Sh. Prem Chand, who is the District Secretary of the Him Shakti Working Union. He has deposed that the respondent had employed the 13 workmen since 1998-1999 on the muster-rolls for 15 days only. The said process continued till Sept., 2007. He has further deposed that certain other workmen working in Sub Division Lad Barol namely Sumer Singh, Sansar Chand, Sudhir Kumar, Ram Dhan etc. were never given any such breaks. He has further placed on record documents Ex. PW1/A to Ex. PW1/H. The said documents amongst others pertain to the mandays of Sumer Singh, Sansar Chand, Sudhir Kumar and Ram Dhan.

12. The respondents on the other hand have examined the Executive Engineer Sh. K.S. Thakur as RW1. He has placed on record the mandays of the 13 workmen vide Ex. RW1/B to Ex. RW1/N. In his cross-examination he had denied that the aforesaid workmen were only appointed for 15 days. As per him they were appointed for 20 days in a month only. He has further admitted this process continued from 1998 to till August, 2007. He further admits that

since September, 2007 the workmen are being issued muster-rolls for 30 days. He has also admitted that all the 13 workmen are still working in the Lad Barohl Division. He has admitted the signature of one Sh. R.C. Sharma Assistant Engineer on Ex. PD, the muster-rolls of Sumer Singh, Sansar Chand, Sudhir Kumar and Ram Dhan. The perusal of Ex. RW1/B to RW 1/N, the mandays of the 13 workmen placed on record shows that in fact muster-rolls was issued to the workmen for 14-15 days right from the inception till September 2007. It is not in one odd case, the one of the odd cases, but in the case of all 13 workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster-rolls was issued only for 14-15 days to all the workmen has not been spelt out by the respondent either in their pleadings or in their evidence. It is version of the respondent that till September 2007 muster-rolls for only 14-15 days were issued to the workmen.

13. On the contrary the mandays of Sumer Singh (Ex. PW1/A and Ex Pd) shows that the said workmen was engaged in 1999 and since then he was being offered muster-rolls for a full month. So was the case relating to Sansar Chand who was also appointed the year 1999 as is clear from Ex. PW1/d. Sudhir Khan and Ram Dhan who came to be appointed in the year 2003 were also issued muster roll for the entire month as is clear from PW1/C to PW1/D. Admittedly even these workmen are employed in Sub-Division Lad Barohl. The Executive Engineer while appearing as RW1 has admitted that the mandays has been issued by his Assistant Engineer. Why the 13 workmen who were admittedly senior to the aforesaid workmen were not granted the muster-rolls for the entire months has neither been explained nor their seems to be any plausible reasons for the same. After September 2007 the respondent themselves started giving full muster-roll to the 13 workmen. It is not even the case of the respondents that the Sub Division was starved of funds and workmen. They all continued working uninterruptedly but for only 15 days in a month right from the inception till date. Certain similar situated persons however continued to be granted full musterroll. The respondent was either resorting to favouritism or acting in a partisan manner to one set of workmen or was simply resorting to such process with an object of depriving them of the status and privileges of a permanent workmen, entitling them to regularization, as per the policy of the State. It is an act of gross discrimination which is ex facie borne out from the record. There can be no two opinion about it. Mere glance at the record high light the glaring discrepancy and discrimination perpetuated by the respondents.

14. The aforesaid action of the respondent as discussed above is not only an “unfair labour” practice as per the provision of Section 2 (r.a.), but is also against the provision of the 25-B of the act, which inter alia stipulates that the workmen shall be in continuous service”, except because of an interruption on account of sickness authorized leave, accident, strike which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workmen. The action of the respondent in not intentionally issuing muster-roll for the entire month to the workmen was not due to any fault of the workmen. The cessation of work was caused due to the arbitrary, discriminatory attitude of the respondent. Thus it has to be presumed that the 13 workmen were in “continuous service,” continued service uninterruptedly with the respondent from the respective dates of their engagement. The sole inference from the entire circumstances discussed above is that the action of the respondent in giving fictional breaks to the workmen and in the process disengaging them after 15-16 days every month till Sept., 2007 was illegal and against the provision of the Industrial Disputes Act.

15. It is thus held that the aforesaid 13 workmen were in continuous uninterruptedly service with the respondent from the respective dates of their engagement. The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service of the workmen. Their seniority shall be reckoned from their initial date of engagement. Consequently the 13 workmen shall be entitled to regularization from their initial date of engagement, though subject to the policy of the State.

RELIEF

16. For all the aforesaid reasons discussed above it is thus held that the aforesaid 13 workmen were in continuous uninterrupted service with the respondents from their respective dates of engagement. The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service of these workmen. Their seniority shall be reckoned from their initial dates of engagement. It further goes without saying that the 13 workmen shall be entitled to regularization from their initial date of engagement, though subject to the policy of the State. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 20th day of Sept., 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal cum
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 27/2006

Date of Institution : 3.1.2006

Date of decision : 28.8.2010

The General Secretary, Ayurvedic Plants/Production/Collection, Employees Association, Herbal Garden, Jogindernagar, District Mandi, H.P.Petitioner

Versus

1. The Director, Ayurvedic, H.P. Shimla-9
2. The Project Officer Herbal Garden, Jogindernagar, District Mandi, H..P.Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the action of 1. The Director of Ayurveda, H.P. Shimla-9, 2. The Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P. not to be regularize the services of Shri Sher Singh S/o Shri Sain Dass and others (10) workmen (list enclosed) after completion of 8 to 10 years services is proper and justified? If not, from which dates the aggrieved workmen are entitled for regularization and with what reliefs?”

2. The petitioner union by way of the statement of claim has averred that vide demand charter dated 27.10.2004 the union had sought the regularization of workmen who had completed 8 to 10 years of continuous service with the respondents. On the failure of conciliation the present reference has arisen.

3. Per the union the 10 workmen whose names has been referred in the demand charter have been working continuously with the respondent since the year 1991 and 1992. They were engaged on the dates mentioned against their names in the statement of claim on daily wages. However, the said workmen had been given fictional breaks from time to time so that they could not complete the requisite 240 days in each calendar year. Even earlier such demand notice had been issued and vide reference no. 61/2000 decided by this Court on 11.8.2004 the respondent had been directed not to give fictional breaks to the workmen working in the Herbal Garden, Joginder Nagar and all the workmen were held entitled to seniority from the year 1991 after counting the period of artificial breaks given to the workmen during the said period. The copy of the award had been supplied to the respondents as far back as 26.10.2005 but still the workmen have not been regularized by the department.

4. During the course of conciliation the respondents had even admitted that the 10 workmen were entitled to be regularized as per the policy of the State in the year 1999, 2000 and 2001. Not only this the persons who were junior to the said 10 workmen namely Sohan Singh, Lohali Devi, Ram Singh, Saini Devi, Punni Devi, Prem Singh, Kuldeep Kumar and Judhya Devi have since been regularized by the respondents from the year 2-002. All the aforesaid workmen had not completed 240 days in the year 1991, still they have been regularized whereas 10 workmen who had already completed 240 days in the year 1991 have not been regularized.

5. The union thus claims that the workmen be regularized after completion of 8 to 10 years continuous service and the period of breaks from 1991 to 1998 be also counted for the purposes of continuous service as per the earlier award passed by this Court. The respondents be also be burdened with interest on backwages.

6. While contesting the claim the respondent inter alia raised the preliminary objections of the reference being not maintainable and being bad for mis-joinder of parties.

7. On merits it is not denied that the demand charter had been given by the Association but as per the respondents since the Association was not registered it has no locus standi to file the demand charter. It is not denied that the workmen mentioned in the statement of claim were not working in the Herbal Garden, Joginder Nagar, however one of them namely Hirda Ram is stated to have retired after attaining the age of 60 years on 31.12.2001.

8. A few of the applicants are stated to have not fulfilled the eligibility criteria of 10 years of continuous service in each calendar year and as such their services were not regularized. The persons stated to be junior to the 10

workmen had completed 10 years of continuous service in each calendar year as on 31.12.2001 and as such had been regularized by the department. It is admitted that an earlier reference being 60/2000 had been decided earlier and the compliance of the award has already been made. The workmen mentioned in the statement of claim are still stated to have not completed 10 years of continuous service with 240 days in each calendar year and as such they could not be regularized. The workmen referred to in para no.10 of the statement of claim are stated to be senior to the petitioners. The respondent thus seeks dismissal of the reference.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. I notice that on 27.6.2006 the following issues came to be framed by my Id. predecessor:

1. Whether the claimants are entitled to be regularized in service from the date of they have so claimed. . .OPP.
2. Whether the petition is maintainable. . .OPR.
3. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

- Issue No. 1 : Yes
 Issue No.2 : Yes
 Relief. : Allowed as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

12. The short grouse of the petitioner union in the reference is that the workmen who had completed 8 to 10 years of continuous service as per the policy framed by the State be regularized and in this behalf the earlier decision of this Court dated 11th August, 2004 (Ex.PW1/G) be also kept in mind whereby the 10 workmen had been held entitled for seniority since the year 1991, oblivious of the artificial breaks given by the department to them in this interregnum.

13. It is not in dispute that vide Ex. PW1/G the respondents had been directed to reckon the seniority of the workmen without any artificial breaks from the year 1991. Though as per the respondents the said award has been duly complied with and it is also apparent from Ex. PW1/B. The discrepancy had indeed been done away with, but only by the field staff. The respondents had issued a revised seniority list of the workers working in the Herbal Garden, Joginder Nagar and had sent the same for consideration to the State. Apparently nothing has been done by the Secretary, Ayurveda as a sequel thereto.

14. The witness of the respondents Sh. Subhash Rana (RW1) has admitted that Ex.PW1/C to Ex. PW1/D have been issued by the department. It is not denied that certain workmen have been regularized in the year 2002 but that was on the basis of pre-revised seniority Ex. PW1/D. The respondents have prepared a revised seniority list as per Ex. PW1/B but no action has taken in pursuance thereto for regularization of the workmen.

15. During the course of arguments it transpires that the matter had already been sent to the Government for approval but the same has not been received back. The earlier judgment passed by this Court vide Ex. PW1/G has already set at rest the question of grant of fictional breaks. The breaks so given to the workmen had been ordered to be counted w.e.f. 1991 and as a sequel thereto the field staff had also conducted an exercise and sent the same for the approval of the Administrative Department. It was sent to the Administrative Department somewhere in the year 2008. Nothing has been heard since then by the field staff. The callousness being shown by the department is apparent. There is nothing much which the Administrative Department had to do. Based on the earlier judgment and the work done by the field staff only the approval had to be sent by the department for regularization of the workmen. Unfortunately it was not done. The regularization in any case was to be the ordered on the basis of the policy decision taken by the State as far back as the year 1999 and 2000. In fact successive notifications had been issued by the State in respect of regularization from time to time. They were all issued after the concurrence of the finance department. As such even the finance department did not have much to say, to delay the matter unnecessarily for such a long time. The department has shown utter disregard to the earlier award passed by this Court.

16. For all the aforesaid reasons it is more than apparent that the claimants were entitled to regularization on the basis of the revised seniority list. Inaction of the respondents has not only delayed the regularization of some of the workmen but few of them have already superannuated after having put in 60 years. The workmen have been deprived of their rights solely because of the laxity shown by the department. Consequently the reference is allowed. The respondents are directed to regularize the services of the 10 workmen as per the policy of the State i.e. after the

completion of 10 years of service with the minimum of 240 days in each year on the basis of the revised seniority list sent by the filed staff vide Ex. PW1/B. All the consequential benefits arising thereto shall also be paid to all the workmen mentioned in the statement of claim within the period of three months of the publication of the award, failing which the respondents shall pay interest @ 9% from the date of award till the realization of the amount due. The petitioners shall also be entitled to costs which are quantified at Rs.10,000/-. The issue is decided accordingly.

ISSUE NO. 2

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioners and against the respondent.

RELIEF

18. For all the aforesaid reasons discussed hereinabove the referenced is allowed. The respondents are directed to regularize the services of the workmen mentioned in the reference as per the policy of the State i.e. after the completion of 10 years of service along with all consequential benefits within the period of three months of the publication of the award, failing which the respondents shall pay interest @ 9% from the date of award till the realization of the amount due. The petitioners shall also be entitled to costs of Rs.10,000/-. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 28th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 33/2007
Date of Institution : 28.3.2007
Date of decision : 28.8.2010

The General Secretary, Ayurvedic Plant Production/Collection Employees Association, Herbal Garden,
Jogindernagar, District Mandi, H.P.Petitioner.

Versus

1. The Director, Ayurvedic, H.P. Shimla-9
2. The Project Officer (Medicinal Plants), Research Institute in ISM, Joginder Nagar, Distt. Mandi, H.P.Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the action of the Director, Ayurveda, H.P., Shimla-9 (2) The Project Officer (Medicinal Plants), Research Institute in ISM, Joginder Nagar, Disdtrict Mandi, H.P. to give break in service to Shri Bhumi Singh s/o Sh Tara Chand, Shri Sansar Singh s/o Shri Himal Singh, Shri Sarwan Kumar s/o Shri Rattan Chand, Shri Hem Singh s/o Shri Bhargu Ram, Shri Som Nath s/o Shri Bhagatu, Smt. Shakuntla Devi w/o ShriKahan Singh, Smt. Bhagwati Devi w/o Shri Nagand and Shri Deepak s/o Shri Kanhiya workmen from time to time w.e.f. year , 1999 and year, 2000 during their service period without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of break period and service benefits the above aggrieved workmen are entitled to?”

2. In furtherance to the reference the Union has averred that the workmen namely S/Sh. Bhumi Singh, Sansar Singh, Sarwan Kumar, Hem Singh, Som Nath, Smt. Shakuntla Devi, Smt. Bhagwati Devi are working in the Herbal Garden Joginder Nagar since 1999 and Sh. Deepak is working since 2000 as daily waged beldar.

3. The short and simple grouse of the union is that the aforesaid workmen were not allowed to complete 240 days in any of the years. They were continuously given fictional breaks despite directions of the Director of Ayurveda to the contrary.

4. The demand had been raised before the conciliation officer. The process having failed and hence the present reference. The action of the respondent in given fictional breaks was stated to be merely to frustrate the right of the workmen under the provisions of the Industrial Disputes Act. It is thus prayed that the respondent be directed not to give fictional breaks to the workman in future. The breaks already granted be directed to be counted for the purpose of their continuity and seniority in service. The Union also prays for payment of backwages with 9% interest.

5. While contesting the claim the respondent inter alia raised the preliminary objections of the Association having no locus-standi to file the reference as it was not a registered body.

6. On merits it is not denied that the aforesaid workmen were not engaged with the respondent, but per the respondent they had been engaged temporarily as casual labourers in the Herbal Garden Joginder Nagar under the project "Cultivation and Development of medicinal plant" and the funds in his behalf are provided from the grant-in-aid received from the Government of India. Each workmen has been engaged as per availability of work and budget under the scheme. The work is further stated to be seasonal in nature.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 10.7.2008 the following issues came to be framed by my Id. predecessor:

1. Whether the respondent had given breaks in the services of the petitioner ...OPP.
2. If the above issue 1 is proved, whether the respondent's act of giving breaks in the petitioner's service is unlawful. If so, what relief the petitioner is entitled to?OPP.
3. Whether the petitioner's association is unregistered. If so, to what effect?OPR.
4. Whether the claim petition is maintainable. ...OPR
5. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 :	Yes
Issue No.2 :	Yes
Issue No.3	No
Issue No.	4 Yes.
Relief. :	Allowed as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2.

10. Both the issues are being taken up together for discussion as they are co-related and intermingled.

11. At the very outset it may be noticed that as per instruction received from Dr. Subhash Rana the case of aforesaid workmen is already pending decision regarding their regularization w.e.f. year 1999, based on earlier decision of this Court titled Bahadur and other –vs- The Director of Ayurveda decided on 27-11-2008. Tacitly it signifies that the respondent have counted the period of their engagement without a fictional breaks so given to them since the year 1999.

12. Even otherwise, as per the evidence on the record the respondent had never issued any appointment letter to the aforesaid workmen that they were appointed against a specific work or work was seasonal in nature or was under a specific project "Cultivation and Development of medicinal plant". The work not being seasonal is otherwise apparent from the details of the mandays of the said workman annexed by the respondent themselves vide Ex. RW1/A. The number of days each workman has put in shows that it was indeed not seasonal work.

13. The other aspect of matter is that in the year 1999 the Director of Ayurveda had advised the field staff vide Ex. PW2/A to desist from giving any breaks to the worker after 89 days in future. Apparently this break was prevalent in the Herbal Garden Jogindernagar, as is clear from Ex. RW X1/A. About 12 workmen had been given the benefit of continuity from the year 1991 on the some allegation of having been given fictional breaks. There is nothing on record that the engagement of the aforesaid workmen was in pursuance to the Central aided project. It has thus to be inferred that the cessation of work was not due to any fault part of the workmen. Keeping in view the stand taken by the respondent, it has thus to be held that the workmen were in continuous service ever since their engagement. The cessation of work and the non-availability of funds were not due to the fault of the workmen.

14. Not only this the Hon'ble High Court in one of the recent judgment titled Baljeet Singh –vs- State of H.P. (CWP. No.4595/09) decided on 8-12-2009 has directed the respondent not to give artificial breaks to the workmen pertaining to the Herbal Garden Hamirpur and Joginder Nagar. The period of artificial breaks were also ordered to be regularized. It was ordered in view of the instruction issued by the Director of Ayurveda. The same ratio shall also apply to the fact and circumstances of the present case.

15. For all the aforesaid reasons discussed above it has to be held that the respondent had been given fictional breaks to the workmen. The said act of the respondent is totally illegal and against the statutory provisions of the Industrial Disputes Act. Consequently the respondents are directed not to give any fictional breaks to the aforesaid workmen in the future. They shall be entitled to continuity of services from the date of their respective engagement. They shall however not be entitled to any pecuniary benefit for the said period.

Issue No. 3.

16. No evidence had been led by the respondent that the petitioner's Association is unregistered and consequently the issue is held against the respondent and in favour of the petitioner.

ISSUE NO.4

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioners and against the respondent.

RELIEF

18. For all the aforesaid reasons discussed above it has to be held that the respondent had been giving fictional breaks to the workmen. The said act of the respondent is totally illegal and against the statutory provisions of the Industrial Disputes Act. Consequently the respondent is directed not to give any fictional breaks to the aforesaid workmen in the future. They shall be entitled to continuity of services from the date of their respective engagement. They shall however not be entitled to any pecuniary benefits for the said period. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 28th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum895
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 11/2005
Date of Institution : 11-1-2005
Date of decision : 31-8-2010

Sh. Ghanshayam s/o Sh. Kishan Chand r/o Vill. Dukhi, P.O. Kamand Tehsil Sadar, Distt. Mandi, H.PPetitioner

Versus

1. The Deputy General Manager, Tourism Development Corporation, Manali, Distt. Kullu.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Laxman Thakur, adv.

For the Respondent : Sh. T.C. Sharma, adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of service of Sh. Ghan Shyam s/o Sh. Kishan Chand Daily paid Labour by Dy. General Manager HPTDC, Manali (H.P.), (2) The Managing Director, HPTDC, Shimla w.e.f. 1-7-1999 without any notice, chargesheet, enquiry and without compliance of Section 25-F and 25-H of the Industrial Dispute Act, 1947 on completion of 240 days continuous service is legal and justified? If not, to what relief and consequential service benefit including back wages seniority and amount of compensation of Sh. Ghan Shyam s/o Sh. Kishan Chand is entitled for?”

2. Briefly the case set up by the petitioner in the statement of claim is that he was appointed as a labourer for the help of Electrician on daily wages in December, 1997 in Naggar, Distt. Kullu. He worked as such with the respondent till June, 1999. The petitioner has completed more than 240 days in the 12 months, prior to his termination.

3. Further, per the petitioner his services were all of sudden terminated in June, 1999, orally and without issuing any notice as per the requirements of the Industrial Disputes Act (hereinafter to be referred to as the Act). The petitioner approached the Labour-cum-Conciliation Officer Mandi and hence the present reference.

4. The petitioner claims that his termination be quashed. The respondent be directed to reengage the petitioner from the date of his illegal termination with full backwages and all consequential benefits.

5. While contesting the claim the respondents averred that the petitioner was engaged as labourer on daily wages along with the Departmental electrician on temporary basis. The petitioner never worked regularly. His services were hired as temporary labourer periodically, as per the necessity to help the electrician. The respondent has further averred that the petitioner had been engaged temporarily till the completion of electrical fittings and thereafter his services were not required by the respondent. The respondent thus seeks the dismissal of the claim.

6. No rejoinder was filed by the petitioner.

7. I notice that the following issues came to be framed on 8th 12th 2005 by my Ld. .Predecessor.

1. Whether the retrenchment of the petitioner is in accordance with the provisions of Industrial Dispute Act, if so, its effect?OPR.

2. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 No

Issue No. 2 Allowed partly as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

9. In the present case the issue has been framed in the negative as to whether the retrenchment of the petitioner is in accordance with the provisions of the Industrial Disputes Act or not. The parties have led evidence accordingly. I, therefore do not intend to recast the issue.

10. The case of the respondent is simplicitor that the petitioner had been hired as temporary labourer periodically to assist the electrician. His engagement thus was temporary and that too till the completion of electrical fittings. In another words as per the respondent the petitioner had been appointed for a specific work.

11. To substantiate the aforesaid pleading the respondents examined one Sh. Surinder Gupta an accountant of the HPTDC as RW1. He has deposed that the petitioner was employed by the Corporation in December 1997 till June, 1999 for specific electrical repairs of Hotel Nagar Castle. The movement the work was over his services were terminated.

12. In his cross-examination the witness has further deposed that no document has been placed on record to show that the petitioner was employed for a specific work in a particular Hotel. He however admitted that the E.P.F. deduction of the petitioner was deducted by the Corporation. He had no record in relation to the services of the petitioner. He does not know whether the petitioner had completed 240 days prior to his termination, whether any notice was issued to him or not. Further per him he was only dealing with accounts in subject of wages paid to the petitioner. Nothing ocular or documentary, over and above the deposition of Surinder Gupta has been placed on record.

13. The petitioner on the other hand apart from examining himself has placed on record the reply tendered before the Labour-cum-Conciliation Officer by the respondent vide Ex. P1/A and the mandays chart of the petitioner Ex. P1/B.

14. The entire evidence shows that except for February to April 1999 the petitioner worked uninterruptedly with the respondent Corporation. Even if the working period the petitioner is calculated as per the mandays on record (i.e. excluding the mandays of February to April 1999), the petitioner had put in 279 days in the 12 months, preceding his termination. The mandays on record Ex. P1/B has not been controverted by the respondent in any way. The plea of the respondent that the petitioner was hired as temporary labourer periodically to assist the electrician stand falsified by the mandays chart on record. This plea cannot be believed. It further gains strength from the fact that even as per the deposition of RW1 the E.P.F. deduction of the petitioner were being deducted by the Corporation. It thus signifies that the petitioner was on the rolls of the Corporation. The services of the petitioner had not been hired for a particular project.

15. The petitioner having completed 240 days in the 12 months preceding his termination, even if his services were to be terminated the respondent had to take resort to the provisions of Section 25-F. It was however not done. On the contrary there is no evidence on record to remotely suggest that the petitioner had been appointed against some specific work or project and after cessation of the same the services of the petitioner was to come to an end automatically. The respondent witness knows nothing about the case. He does not have the record. Neither has anything being placed on record by way of documentary evidence to substantiate the said plea. It is thus amply clear that the action of the respondent in terminating the services of the petitioner without any notice, as contemplated under section 25-F is illegal. The respondents have failed to comply with the mandatory provisions of the Industrial Disputes Act, as such the disengagement of the petitioner is illegal, unjust and void. The retrenchment of the petitioner is in derogation of the provisions of the Act. Consequently the disengagement of the petitioner is set aside and quashed.

16. As a sequel thereto the respondent is directed to reengage the petitioner forthwith. As the petitioner has failed to discharge the initial onus of proving that he was not gainfully employed during his forced idleness, he shall not be entitled any backwages. The break in service shall however be counted towards seniority and continuity of service.

RELIEF

17. For all the foregoing reasons discussed above the reference is allowed. The respondent is directed to reengage the petitioner forthwith. The petitioner shall not be entitled to any backwages. The break in service shall however be counted towards seniority and continuity in service. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 31st day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 288/2008
Instituted on : 13.6.2008
Decided on: : 5.7.2010

Shri Ghanshyamn S/o Shri Ram Saran, R/o Village Kohan, P.O. Sajoo Piplu, Tehsil Sarkaghat, Distt. Mandi.
H.P.Petitioner.

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Ghanshyam S/o Shri Ram Saran, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above Employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 1.1.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.
5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.
6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.
7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.
8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.
9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. . . . OPR.
3. Whether the petition suffers from the vice of delay and laches. . . . OPR.
4. Whether the petitioner is guilty of suppressio veri. . . . OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . . OPR.
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to

have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No. LO/MZ/IV/ID/45/2005 & 576/07-1749, dated 31.3.07. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2007-Mandi dated May 7, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal Cum
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 240/2008
Instituted on : 13.6.2008
Decided on: : 30.8.2010

Shri Gian Chand S/o Shri Goverdhan Singh, R/o Village Neri, P.O. Sandhole, Tehsil Sarkaghat, Distt. Mandi.
H.P.Petitioner.

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Shri Gian Chand S/o Shri Goverdhan Singh by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 1.7.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.
5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.
6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.
7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.
8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.
9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.
10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-
1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
 2. Whether the petition is not maintainable, as alleged. . . .OPR.
 3. Whether the petition suffers from the vice of delay and laches. . . .OPR.
 4. Whether the petitioner is guilty of suppressio veri. . . .OPR.
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . .OPR.
 6. Relief.
12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-
- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO. 1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus: "(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
 - (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so

carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

- “25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

- “25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.7.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had

employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members...."* There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs. 50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing cum Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer

referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2024, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 19, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 30th day of August, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 359/2009
Instituted on : 30.5.2009
Decided on: : 21.10.2010

Shri Gian Chand S/o Shri Hari Singh, R/o Village Oddi, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi. H.P.
....Petitioner

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Gian Chand S/o Shri Hari Singh by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07- 2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 1.1.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the petition is not maintainable, as alleged. . .OPR.
3. Whether the petition suffers from the vice of delay and laches. . .OPR.
4. Whether the petitioner is guilty of suppressio veri. . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR.
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had

employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer

referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/2005 & 1106/07-434, dated 2.2.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated March 28, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 551/2008
Instituted on : 14.7.2008
Decided on: : 5.7.2010

Shri Gopal Singh S/o Shri Sant Ram, R/o Village Gaddidhar, P.O. Garodu, Tehsil Sarkaghat, Distt. Mandi.
H.P.Petitioner.

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Gopal Singh S/o Shri Sant Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 12.2.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the petition is not maintainable, as alleged. . .OPR.
3. Whether the petition suffers from the vice of delay and laches. . .OPR.
4. Whether the petitioner is guilty of suppressio veri. . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR.
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO. 1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. aOnce Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 12.2.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/C and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2022, dated 13.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 29, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not

suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 457/2008
Instituted on : 13.6.2008
Decided on: : 21.10.2010

H.P. Shri Gorakh Ram S/o Shri Hari Ram, R/o Village Khajurati, P.O. Chologarh, Tehsil Sarkaghat, Distt. Mandi.
....Petitioner.

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Gorakh Ram s/o Shri Hari Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 1.8.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertent to another interesting aspect which stares one at the face and *ex facie* seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus *ipso facto* illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void *ab initio*. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.8.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

26. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

27. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

28. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to

protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *"that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members...."* There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

30. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

31. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

32. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1753, dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/07-Mandi dated April 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

33. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

34. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 61/2005
Instituted on : 20.5.2005
Decided on : 1.9.2010.

Smt. Gurdei W/o Late Shri Baldev Singh, Quarter No.I, Type-IB, Baira Siul Project Colony, Surangani,
 District Chamba, H.P. ...Petitioner

Versus

The Chief Engineer, Baira Siul Power Project Station, National Hydro Electric Power Corporation Limited, Surangani,
 District Chamba, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR
 For the Respondent : Sh. V.K. Gupta, AR

AWARD

1. By way of the present reference the appropriate government seeks a determination from this court on the following point:

“Whether the termination of services of Smt. Gurdei W/o late Shri Baldev Singh Ex. beldar by the Chief Engineer, Baira Siul Power Station National Hydro Electric Power Corporation Limited, Surangani, District Chamba, H.P. w.e.f. 16.6.1999 on the basis of domestic enquiry report is proper and justified? If not, what relief of service benefits and compensation Smt. Gurdei is entitled to?”

2. In pursuance to the reference the petitioner has averred in the statement of claim that her husband Baldev was working in Baira Siul Project at Tissa and unfortunately died in an accident on 9.4.1984, while on duty. In the said accident even the petitioner was badly injured resulting in the imputation of her right lower limb. After the demise of her husband the petitioner was appointed as a beldar on compassionate ground on 14.4.1984.

3. In March, 1998 the petitioner fell ill and was under mental depression. The petitioner could not attend to her duties as is evident from the medical and fitness certificate annexed along with as Annexures P1 to P10. The management had initiated disciplinary action against the petitioner and eventually her services were dispensed with vide an office order dated 4.5.2000/6.5.2000.

4. The petitioner assails the termination on the grounds that ex parte inquiry proceedings were held against her and the inquiry report and other proceedings had not been supplied to the petitioner. The attitude of the management was vindictive towards the petitioner. It is further averred that the respondent management even did not supply the inquiry proceedings sought by the petitioner to prefer an appeal before the Competent Authority.

5. The absence of the petitioner from duty was under medical compulsion, which was beyond her control.

6. It is further averred by the petitioner that striking off the name of the petitioner from the rolls of the Corporation on the grounds of unauthorized absence from duty amounts to retrenchment and the management has failed to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The respondents have failed to comply with the principle of natural justice.

7. The penalty so imposed upon the petitioner is also stated to be disproportionate. The petitioner thus prays that the order of termination be set aside and quashed and she be ordered to be reinstated with full back wages with all consequential benefits.

8. While contesting the claim the respondent has raised the preliminary objections vis-à-vis maintainability, and there being delay in raising the industrial dispute.

9. On merits it is however contended by the respondent that the petitioner had willfully and deliberately remained absent from duty and despite reminders had failed to resume her job or explain the reasons for her absence. The copies of the medical certificate attached by the petitioner are stated to be fictitious. Per the respondent there existed a project hospital at Surangani and had the petitioner been ill she would have availed the services of the project hospital.

10. The petitioner was stated to have been duly served with the charge sheet. Per the respondent, she failed to appear before the Inquiry Officer despite repeated opportunities. The termination of the petitioner was not a case of retrenchment. Therefore there was no requirement of notice pay or compensation to be paid to her. The petitioner neither approached for payment of gratuity and other terminal benefits. She had refused to accept the payment on account of provident fund and the management has no objection of paying her dues on submission of the no dues certificate. The respondent has not violated any of the rules of natural justice. Even during her absence the management had written letters to the petitioner to improve her conduct but the petitioner did not bother. The respondent thus prayed for dismissal of the reference.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 13.9.2006 the following issues come to be framed by my Ld. Predecessor.

1. Whether the dis-engagement from the service of the claimant by the respondent w.e.f. 16.6.1999 is proper and justified? . . .OPP
2. If issue no.1 is not proved to what relief of service benefits the claimant is entitled to? . . .OPP
3. Whether claim petition is bad for non-joinder of parties. . . .OPR
4. Whether the reference comprise a stale dispute, hence, not maintainable? . . .OPR
5. Relief.

13. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue-wise findings may be returned thus:-

Issue No.1 :	No
Issue No.2 :	As per the operative part of the award.
Issue No.3 :	No
Issue No.4 :	No
Relief. :	Reference allowed.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

14. Both the issues are being taken up together for discussion as they are co-related and intermingled.

15. The services of the petitioner came to be dis-engaged vide order dated 4.5.2000 and 6.5.2000 (Ex. PW1/N and Ex. PW1/O respectively) whereby the name of the petitioner was struck off from the rolls of Baira Siul Project w.e.f. 16.6.1999. Per the respondents the action was initiated against the petitioner in pursuance to a disciplinary inquiry ordered against the petitioner for habitual and willfully absence from duty, without prior permission. As a sequel thereto an inquiry had been ordered against the petitioner. Per the respondents initially a show cause notice was issued to the petitioner and thereupon an office memorandum vide Ex.RW-1/U along with articles of charge (Ex.RW1/B) had been initiated against the petitioner. A proper inquiry was initiated thereto but the petitioner failed to put in appearance before the Inquiry Officer, despite having been duly served. On the basis of an exparte inquiry report Ex.RW-1/Z-8 the services of the petitioner were dispensed with.

16. The respondents contend that due opportunity was granted to the petitioner but she did not participate in the inquiry proceedings and consequently the Inquiry Officer had submitted his report. On examination of the available record submitted along with the inquiry report, it had been established that the petitioner had been habitually and willfully absenting herself from duty without prior permission.

17. On the other hand it is the case of the petitioner that she had been suffering from acute depression woe.f. 16.6.1999 and 21.12.2000 and as such was not medically fit. She had been ill since March, 1998. Because of her ailment she could not attend to her duties and could neither participate in the inquiry proceedings. It is further the case of the petitioner that she was neither heard nor any inquiry report was supplied to her. She had even applied for the copies of the day to day proceedings to prefer an appeal but the management had failed to supply any documents to her. In proof of her ailment she has placed on record her medical certificate Ex. PW1/B to PW1/M the OPD ticket of the Baira Siul Project hospital vide Ex. PW1/W whereby the petitioner had been referred to Mental Hospital Amritsar for further check up on 5.5.2000. The petitioner has also examined one Surjit Singh Dogra as PW2 who had submitted an application to the Chief Engineer, Baira Siul Project on 12.12.1999 to get the petitioner medically checked up and further seeking monetary held from the Chief Engineer in this behalf. The petitioner has further examined one Dr. Mahesh Chandra (PW3), Senior Medical Officer, Baira Siul Power Station, Surangani, Chamba who has deposed that the petitioner had been suffering from mental depression in March, 1998 and she has been examined by one Dr. Satrupa Bhattacharya, Dr. Bhasker and Dr. Shelender, who were employed in the project and posted in the hospital. The documents relating to the ailment of the petitioner are Exhibits PW3/A-1 to Ex. PW3/A-18. The petitioner has also examined one Sunder Mohan Sharma, Registered Medical Practitioner, Chamba as PW4. As per this witness the petitioner remained under his treatment w.e.f. 16.3.1998 to 15.5.1999 he had issued medical certificates during her ailment vide Ex. PW1/B to PW1/M and Ex. PW1/P to Ex. PW1/Q.

18. The respondents have examined one Sh. D.R. Rathore, Assistant Manager Administration as RW1/A. Apart from deposing that the State Government is not the appropriate Govt. in respect of an industrial dispute arising from the NHPC he has deposed that the petitioner was appointed as a beldar on 14.8.1984 on compassionate grounds and since 16.3.1998 she remained abruptly absent without any intimation. The respondents directed the petitioner to resume back but she did not join. She resumed work on 14.7.1998. The petitioner did not submit any leave application for the period of her absence and since the very next day i.e. 15.7.1998 she again absented from duty. The petitioner again appeared on 24.7.1998 along with her explanation and again absented in the second half of the day. The petitioner had been habitually absenting from service. Despite repeated instructions she failed to amend her behaviour. She was eventually transferred to the office of the Assistant Manager, Mechanical, disposal Section on 27.11.1998 but she did not join the place of her transfer. Thereupon she was served a show cause notice on 13.7.1999 along with articles of charges and the statement of imputation of misconduct by registered post but she refused to receive the same. The petitioner was thus transferred to the Personnel and Administration Department on 13.12.1999. She was deputed in the office canteen. The petitioner refused to take any correspondence relating to the inquiry. Even the Inquiry Officer had summoned her on 16.3.2000, 4.4.2000 and 19.4.2000. The petitioner had refused to take the registered AD and as such she was proceeded exparte and the Inquiry Officer had submitted his report on 20.4.2000 i.e. Ex. RW-1/Z-8. On the basis of the same the disciplinary authority had satisfied itself that the petitioner was habitually and willfully absenting from duty. This witness has however not denied the petitioner's medical condition as portrayed by her. He has also admitted that one joint application was received from certain workers and on the basis of the same the management had provided Rs.500/- as advance medical assistance, which was paid to the petitioner to go to Amritsar for her treatment.

19. The respondents have also examined one Shri T.P. Sharma, Dy. Manager (Electrical) Baira Siul Power Station from 1992 till the year 1997. The petitioner had worked in his department. He has reiterated the same position that the petitioner used to habitually and willfully remain absent from work and despite repeated opportunities did not amend her behaviour. This witness has also admitted that she had returned back and he had received an application from the petitioner on 20.8.1998 vide Ex. PW1/2 for seeking ex-post facts leave. Per him since it was not accompanied with the medical certificate he had returned back the application to the petitioner.

20. The respondents case is that due inquiry had been conducted and thereupon the disciplinary authority acted upon the report of the Inquiry Officer (Ex. RW1/Z-8) to come to the conclusion that the petitioner had been habitually and willfully absenting from her duty.

21. I have carefully perused the inquiry report (Ex. RW1/Z-8). The perusal of the said report shows that Inquiry Officer in fact had not conducted any inquiry worth the name. After having issued three notices to the petitioner to put in appearance i.e. on 16.3.2000, 4.4.200 and 19.4.2000. On her not putting in appearance the Inquiry Officer finally came to the conclusion that the case be decided exparte and the disciplinary authority may take appropriate action against the petitioner. It is a cardinal principle of law and by now well settled that the domestic inquiry must confirm to the basic requirements of natural justice, and one of the essential requests of a proceedings of this character, is that when the inquiry is over, the Inquiry Officer must considered to record the evidence and even record the

conclusions and reasons thereof. The Inquiry Officer need not write a very long or a elaborate report; but, since his findings are likely to lead to dismissal, as has happened in this case, it is his duty to record clearly and precisely his conclusion and the reasons for reaching such a conclusion. The reasoning of following such a procedure is primarily to enable the Tribunal to decide whether the approach adopted by the Inquiry Officer was erroneous or not and whether his conclusion were perverse. No such exercise worth the name was conducted by the Inquiry Officer. These basic principles are to be scrupulously followed and have not been even remotely taken care of by the Inquiry Officer. Strangely even the disciplinary authority has come to these findings that the petitioner was habitually and willfully absenting from duty and that too on this report of the Inquiry Officer. How the disciplinary authority came to this conclusion is very difficult to fathom.

22. Not only this, the disciplinary authority in its wisdom had decided to strike of the name of the petitioner from the rolls of the Baira Siul Project i.e. entailing dismissal of services. Even on the proposed penalty, which admittedly was a major penalty, no show cause was issued to the petitioner. It again was a total non compliance of the basic principle of natural justice and the statutory requirement of a domestic inquiry. The petitioner had had a right to be heard before the imposition of penalty by the disciplinary authority, which has not been complied with by the respondent. It assumes significance because of the fact that the inquiry report has not even returned any findings against the articles of charge on which the inquiry had been initiated.

23. From the documents on record it is otherwise inferable that the petitioner was suffering from some ailment and the said fact was duly brought to the notice of the concerned quarter as is clear from Ex.PW1/2 dated 26.8.1998 and annexure Ex.R4 dated 24.7.1998. The petitioner had apart from informing the Senior Manager had also sought to bring it to the notice of the disciplinary authority after the ex-parte inquiry, to explain her absence. When adverting to the merits of the case, vis-à-vis grounds for absence suffice to say that reasonable and satisfactory explanation for absence had been given but the same was never considered by any quarter.

24. The respondents have further sought to portray in their pleadings that the medical certificates attached by the petitioner are fictitious. Had the petitioner been ill she would have availed the services of the Project Hospital at Surangani. The plea set up by the respondents is fallacious and not worthy of credence. The petitioner has examined the doctor of the Project Hospital, Dr. Mahesh Chandra as PW-3. He has proved on record the prescription slips and the medical record issued by the Project Hospital vide Ex. PW-2/4-1 to Ex. PW-3/A-18. Apparently all the prescriptions on record pertain to the Project Hospital. Not only this the respondents witness, Sh. D.R. Rathore RW-1 has himself admitted that the management had offered Rs.500/- as advance medical assistance to the petitioner. If that was so, the explanation offered by the petitioner, for her absence was indeed reasonable and satisfactory. None took note of it. Neither the Inquiry Officer and nor the Disciplinary Authority.

25. The Id. authorized representative for the respondent, further contends that even if the inquiry was defective the gravity of the misconduct can be gone into by this Court at this stage. The Id. authorized representative has further placed on reliance on the judgment of Hon'ble Delhi High Court titled as Krishan vs. DTC (WPC No.2949/0 decided on 9th May, 2007) to contend that once an employ absents himself from duty without sanctioned leave the authority can, on the basis of the record reach the conclusion that the employ was habitual of neglecting his duties and order his termination. There is no dispute on the aforesaid preposition of law. A person can undoubtedly be terminated for willfully absence. However the termination has to abide by the principle of natural justice which are integral part of the procedure vis-à-vis a domestic inquiry. In the case in hand there was in fact no inquiry which was conducted by the Inquiry Officer nor any record had been placed before him. The Inquiry Officer even never thought of deliberating upon the same to come to same conclusion. Merely because the petitioner did not put in presence before him the Inquiry Officer closed the proceedings and left the matter to the discretion of the disciplinary authority. Such procedure is unknown to law. The Inquiry Officer was to return the findings on each articles of charge framed against the petitioner. How and what under circumstances the disciplinary authority came to conclusion that the petitioner was willfully absenting from duty is not decipherable either from the inquiry report as the Inquiry Officer has not even bothered to refer to the list of documents attached along with the articles of charge issued to the petitioner to hold that the petitioner was willfully absent from duty. That apart, as is clear, the said documents were not even placed before the Inquiry Officer as is apparent from his report Ex.RW-1/Z-8. In this circumstances how the disciplinary authority came to these conclusion is beyond comprehensive.

26. As a sequel to the discussion held hereinabove it is to be held that no proper inquiry was hold by the respondent while terminating the services of the petitioner. In fact no inquiry has been held by the respondent before dispensing with the services of the petitioner. No doubt sufficiency of evidence in proof of the findings by a Inquiry Officer is beyond the scrutiny of the courts but in the present case the inquiry itself was a sham. In fact no inquiry was conducted. The disciplinary authority came to the conclusion purely on the basis of his own knowledge. Such inquiry is not sustainable in the eyes of law. It is against all canons of natural justice. Over and apart nothing has been placed on record by the respondents to show as to what are the Standing Orders governing removal from service, it is thus to be inferred that the findings of the disciplinary authority and the Inquiry Officer is illegal. The same liable to be quashed

and set aside and it is ordered accordingly. The disengagement of the petitioner from services w.e.f. 16.6.1999 is thus held to be improper and unjustified. The petitioner is thus ordered to be re-engaged forthwith. She is held entitled to 25% back-wages from the date of her illegal termination till her re-engagement.

ISSUE NO.3

27. Nothing has been brought to my notice as to how and why the petition is bad for non-joinder of parties. The issue is thus decided against the respondent and in favour of the petitioner.

ISSUE NO.4

28. As is apparent from the pleadings and evidence on record that there is no implicit delay in raising the dispute. Though strictly speaking the provisions of the limitation Act do not apply in the present proceeding and nor is there any inherent limitation prescribed for raising a dispute. Even assuming it had been so the petitioner would have been entitled to the exclusion of time for having proceeded in a Court. Be it as it may, the fact remains that it cannot be said that the petitioner had raised the dispute which was stale. Consequently the issue is decided against the respondent and in favour of the petitioner.

29. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

30. Not only this our own Hon'ble High Court has further gone on to hold that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same have been referred to this Court by the State Government. The Court can only take into consideration the delay at the time of granting the main relief. In a case titled as Naginder Kumar –vs-HPSEB (CWP No.885 of 2007 decided on 1-11-2007), it has been held thus.

RELIEF

31. For all the foregoing reasons discussed above I am constrained to hold the termination of services of the petitioner is illegal and unjustified. The petitioner is accordingly ordered to be reengaged forthwith. The petitioner shall be entitled to 25% back wages from the date of her illegal termination till her reengagement. She shall also be entitled to the benefit of continuity of services and seniority from the date of his illegal termination. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 1st day of September, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 302/2008
Instituted on : 13.6.2008
Decided on: : 21.10.2010

Shri Gurmail Singh S/o Shri Prabhu Ram, R/o Village Bhadrer, P.O. Kujbalh (Cholgarh), Tehsil Sarkaghat,
Distt. Mandi. H.P.Petitioner

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Gurmail Singh S/o Shri Prabhu Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07- 2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 2.6.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.
5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.
6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.
7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.
8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.
9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 2.6.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen,

however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no.700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1685 dated 31.3.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.’s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent’s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 8/2009
Instituted on : 26.2.2009
Decided on: : 21.10.2010

Shri Hari Dutt S/o Shri Damoder, R/o Village Bramhfalad, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi. H.P.
....Petitioner

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:
“Whether retrenchment of services of Shri Sukh Ram S/o Shri Dhani Ram by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08/07/ 2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”
2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent no.3 on 17.6.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.
3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.
4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.
5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.
6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.
7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.
8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.
9. It is also averred by the respondent that the retrenchment was necessitated because of surplusage of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:—

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/— as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means—

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section
- (iii) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iv) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an "industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof—

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

16. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (i) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

19. Now advertng to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is

thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (a) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (b) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (c) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

22. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 17.6.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o

Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

26. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

27. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

28. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

29. The infraction of the provisions of Section 25-G and 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G and 25-H are independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G and 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

30. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of her, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

31. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/06 & 672/07/10079, dated 8.12.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11/23/84(Lab)1D/2008-Mandi dated January 15, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

35. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

36. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 21st day of October, 2010.

(Kr. Chirag Bhanu Singh)
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 103/1996
Date of Institution : 21.9.1996
Date of decision : 21.9.2010

Shri Harnam Singh and 20 other workers C/o Pardhan, Lok Nirman Mazdoor Ekta Union, Joginder Nagar, District
Mandi, H.P.Petitioners

Versus

Superintending Engineer, Punjab State Electricity Board, Shanan Power House, Joginder Nagar, District
Mandi, H.P.Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Chawla, Adv.

For the Respondents : Sh. Anand Sharma along with Sh. Sunil Chaudhary , advocates.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Harnam Siingh and 20 other workers (List enclosed) by the Superintending Engineer, Punjab State Electricity Board, Shanan Power House, Joginder Nagar, District Mandi (HP) without any notice, chargesheet, enquiry and compliance of Section 25(F) of the Industrial Disputes Act, 1947, is legal and justified, if not, to what relief of past service benefits and amount of compensation, the aggrieved workmen are entitled to?”

2. In pursuance to the reference the 21 workmen filed separate claim petitions, almost on identical grounds, averring that they were appointed by the respondent in the Civil Works Division, Punjab State Electricity Board, Shanan. They all worked continuously with the respondent. Their services came to be wrongly and illegally terminated as per the dates reflected in their respective claims. After their illegal termination many workmen had been employed by the respondent. No notices or retrenchment compensation was paid to any one of them. The dates of termination of the workmen vary from the year 1978 till 1984.

3. While contesting the claim the respondent too filed separate replies in respect of all the workmen. However, the text and tenor of all the replies were similar. The respondent raised preliminary objections that the reference is bad being time barred, as the claim relates to the period varying from 1979 onwards and as such this Court has no jurisdiction to try the claim. It is further averred by the respondent that though the reference is regarding termination but the workers have submitted a case for re-employment under Section 25-H and hence it is beyond the terms of reference. That the order of reference does not reflected the real dispute. It is further the averment of the respondent that a joint reference in respect of 21 workmen is illegal and the reference having been made by the Labour Commissioner is in contravention of the provisions of the Industrial Disputes Act (hereinafter referred to as the Act).

4. On merits the respondent denied that the 21 workmen had ever worked with the respondent no.1. The relationship of a master and a servant was denied. Further per the respondent, the mechanical construction division of the Board at Shanan was a separate identity but the same was abolished by the PSEB during June, 1982, 1983 and September, 1984. The petitioners claim of reengagement is thus not possible due to the abolition of the division. It was further averred that since the workmen were never retrenched the question of wrongful and illegal termination does not arise.

5. The present reference has a chequered history initially the Hon’ble High Court of Himachal Pradesh vide its order dated 18.9.1997 in CWP No.227/1997 had held the reference to be illegal and quashed the same. The matter went to the Hon’ble Supreme Court and the orders passed by the Hon’ble High Court were quashed. Consequently the reference was decided by this Court on 18.4.2002 based on the following issues:

1. Whether the termination of services of the petitioners is in violation of Section 25-F of the I.D. Act on the grounds as alleged? . . .OPP
2. Whether the reference is bad in law as alleged? . . .OPR
3. Whether this Court has no jurisdiction to entertain, try and adjudicate upon this reference in hand? . . .OPR
- 3A. Whether the order of reference is bad as it has not reflected the real dispute. If so, its effect? OPR
- 3B. Whether against reference of 21 workmen is bad in law as alleged? If so, its effect? . . .OPR
- 3C. Whether the reference is in contravention of provisions of Industrial Disputes Act and Art. 166 of Constitution of India? . . .OPR
4. Relief.

6. My Ld. Predecessor had dismissed the reference. It was again carried by way of a Writ Petition before the Hon’ble High Court. The Hon’ble High Court vide an order dated 24.9.2007 (in CWP No.1175/2002) set aside the award and remanded back the matter to this Court to decide it afresh, having permitted the parties to lead additional evidence before this Court.

7. As a sequel to the aforesaid order the petitioners re-examined themselves as PW1 to PW19 and also examined four others witnesses and produced on record different documents. The respondents, too examined three witnesses.

8. I have gone through the pleadings and the evidence adduced on record by the parties and on analytical scrutiny of the entire record, the issuewise findings may be returned thus:-

Issue No.1 :	Yes
Issue No.2 :	No
Issue No.3 :	No
Issue No. 3A :	No
Issue No.3B :	No
Issue No.3C :	No
Relief. :	Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO. 2, 3 AND 3A

9. All the three issues pertain to the legality and jurisdiction of this Court to decide the reference and as such is being taken up together for discussion. The respondents have inter alia averred that the reference is bad in law, this Court has no jurisdiction to entertain the reference and the reference does not reflect the real dispute.

10. As to the legality of the reference suffice it to say that the Hon'ble Supreme Court had set the controversy to rest by holding that the reference is valid in the eyes of law. It is in pursuance to the directions of the Hon'ble Supreme Court that the matter came to be reopened. The reference had initially been held to be invalid by the Hon'ble High Court vide its order dated 18.9.19997 passed in CWP No.227/97. However the same was upset by the Hon'ble Apex Court and the matter remanded for adjudication on merits to this Court.

11. The question of delay however has been raised by the respondent. In furtherance to their contentions in this behalf the Ld. counsel for the respondent laid emphasis on a judgment of the Hon'ble Supreme Court titled as Indian Iron and Steel Company Ltd. vs. Prahlad Singh, (2001) 1 SCC 424 and Assistant Engineer, Karnataka vs. Shivalinga, (2002) 10 SCC 167. No doubt in the case in hand the delay of nine and thirteen years respectively have been held to be fatal.

12. However, in Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workmen whose services were illegally terminated. Having surveyed the various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

13. It has been further reiterated and is by now otherwise well settled that a Labour Court will not dismiss a claim on the grounds of delay and laches once the same has been referred to it by the appropriate Government. The delay can at best be taken into consideration at the time of granting the main relief. The same has been the consistent view of the Hon'ble Supreme Court as has been aptly highlighted by our own Hon'ble High Court in a case titled as Naginder Kumar -vs- HPSEB (CWP No.885 of 2007 decided on 1-11-2007, 2008 1 SLJ 425.)

14. As is apparent from the pleadings and evidence on record there is no implicit delay in raising the dispute. Though strictly speaking the provisions of the limitation Act do not apply in the present proceedings and nor is there any inherent limitation prescribed for raising a dispute. Be it as it may, the fact remains that it cannot be said that the petitioner had raised the dispute which was stale. Consequently the issue is decided against the respondent and in favour of the petitioner.

15. Nothing substantial has been urged by the respondent to show how this Court lacks jurisdiction to entertain and try the reference in hand. In any case, after an amendment was made to the Industrial Disputes Act in the year 2002 the jurisdiction regarding “labour disputes” have been literally bestowed upon the Labour Courts having territorial jurisdiction over the “industry”, regarding which the dispute is in existence. As such there was not much to be canvassed by the respondent on this count. The amended provision reads thus:

“2. Amendment of Section 2.- In section 2 of the Industrial Disputes Act, 1947 (Act 14 of 1947):-

(1) For clause (a) the following clause shall be substituted, namely:

‘(a) “appropriate Government” means, the Government of the State or Union Territory, as the case may be in relation to all the industrial disputes concerning any industry or its unit in whose territorial jurisdiction that industry or its unit is situated.”

16. Whether the order of reference was bad as it did not reflect the real dispute it still to be adjudicated upon by this Court. The reference simplicitor is whether termination of the 21 workmen was in violation to the provisions of Section 25-F of the Industrial Disputes Act or not. Even assuming that the relationship of a master and a servant is denied, the same shall not preclude this Court to arrive at a conclusion regarding the existence or non-existence or such a relationship based on the evidence led by the parties. The mere denial of the relationship would not entail that the reference does not reflect the real dispute. The question is incidental to the main issue referred for adjudication to this Court.

17. For all the reasons discussed above all the three issues are thus accordingly decided against the respondent and in favour of the petitioners.

ISSUE NO. 3B

18. It is submitted by the respondents that though 21 demands notices were issued by 21 workmen individually, but all the notices have been clubbed under one reference, which is bad in law. Though it is not disputed that separate demand notices were served and a single reference has been made to the Court, yet since the same dispute was raised in all the notices and the respondent was the same institution/department, therefore, no prejudice has been seemingly caused to the petitioner or the respondent by clubbing these notices. All the demands have been dealt with collectively by the Conciliation Officer who has submitted one failure report in which the dispute raised by all the petitioners has been found to be identical. Therefore, there is no multifariousness of the cause of action which could defeat the case. Therefore, I hold that the joint reference of 21 workers is not against the law and decide the issue against the respondent. Nonetheless the effect of a joint reference and its fall out can be looked into at the time of final decision of the reference.

ISSUE NO. 3C

19. Again it has been submitted that the reference is bad as it has not been made by the State Government, but by the Labour Commissioner. However, the Labour Commissioner has acted as per the powers delegated to him by the State Government, which is very apparent from the wording of the reference itself. He has acted in the name of the State of Himachal Pradesh. The delegation of powers in this behalf has been envisaged Section 39 of the Industrial Disputes Act. It is mentioned therein that in case of appropriate Government being the State Government, the powers can be exercised by such officer or authority subordinate to the State Government as may be specified in the notification. Therefore, the Labour Commissioner being a delegated authority is authorized to act on behalf of the State Government. Therefore the reference does not suffer from any such flaw. I, therefore, hold that the reference is valid and decide this issue against the respondent.

ISSUE NO. 1

20. After the remand of the case the petitioners again examined themselves and all of them have placed on record certificates issued by one of the Sub Divisional Officers of PSEB, Joginder Nagar. The PW1 Ashok Kumar has placed on record his certificate issued by the Sub Divisional Officer, PSEB, Joginder Nagar mark B1 to B8 along with, purportedly extract of the service book pertaining to him. Per him it has been signed by one SDO Shri Rastogi and Xen D.K. Sayal. The second PW Puran Chand has placed on record a certificate issued by a SDO vide mark C. Likewise Bhagat Singh PW3 has placed on record his experience certificate as mark D. The other workmen Dile Ram who has appeared as PW4 has placed his experience certificate on record vide Ex. PW4/B. It is stated to be signed by SDO Sh. Avtar Singh. Kundal Lal who has appeared as PW5 has also placed on record his experience certificate as Ex. PW5/B. Another Kundal Lal who has appeared as PW6 has placed on record mandays chart mark E-1 to E-4.

21. Mohan Singh who has appeared as PW7 has also placed on record an experience certificate mark PW7/B. It is stated to be signed by SDO Kalsi. Likewise workman Shiv Lal who has appeared as PW8 has also placed on record an experience certificate vide mark PW8/B. So has Shyam Singh (Ex. PW9) placed on record an experience certificate Ex. PW9/B on reord. Kuldeep Chand yet another workman has placed on record his certificate vide Ex. PW10/B. Rikhu Ram (PW11) has also placed on record his experience certificate Ex. PW11/B. Kalu Ram, who has appeared as PW12 has likewise produced an experience certificate as Ex. PW12/B and PW12/C. Harnam Singh (PW13) has also produced his certificate vide Ex. PW13/B. Hari Chand (PW14) has also placed on record an experience certificate vide Ex PW14/B signed by the SDO Shanan Civil Construction, Sub Division No.III, Joginder

Nagar. PW15 Shyam Lal has also produced two certificates Ex. PW15/B and PW15/C. PW16 has not produced any experience certificate. He has however deposed that he worked as daily waged beldar with the respondents from 1986 to 1993 under the Electrical and Civil Construction Sub Division, Shanan, Joginder Nagar. PW17, Mohili Ram, PW18 Baldev Singh, PW19 Hari Ram did not produce the experience certificates. They, also reiterated the stand taken by PW17 Mohili Ram.

22. The petitioners have further examined one Sant Ram (PW-20) a retired Junior Engineer from the Control Room, Shanan Power House, Jogindernagar. He has deposed that the petitioners have been working under the respondents. He has further sought to identify the signatures of Xen D.K. Siyal, SDO Rastogi, SDO Avatar Singh, SDO Kuldeep Singh on the respective experience certificates and documents placed on record by the petitioners. Per the witness he joined the PSEB on 2.2.1968 and worked with them as such till 31.10.2006. He has further deposed that the SDO can issue experience certificate and that the services of the petitioner were disengaged by oral orders of the Resident Engineer.

23. The petitioners have also examined one Dagi Ram (PW-21) he has deposed that the petitioners had been working under the respondent and their services had been dispensed without any notice. He knows the witness Sant Ram. The witness was employed in the PSEB on 27.5.1970 as T-Mate and he retired from the Board on 31.12.2006. The Engineer Avtar Singh, Rastogi, D.K. Siyal, Kamboj, M. S. Gandhi used to work with the PSEB. The witness has also worked with them and as such he is conversant with their signatures. He has also identified the signatures of the Engineers on the respective documents placed on record by the petitioners.

24. The petitioners have further examined the record keeper of the office of the Resident Engineer, Om Prakash Rahi as PW22. The witness however deposed that he has working as record keeper w.e.f.1.1.1986 and the summoned record was not available in their office. He does not know anything about the record prior to 1986.

25. The respondents on the other hand have examined one Prem Pal, Junior Engineer, PSEB Power House Shanan as RW1. Per him he is posted at Shanan Power House since 1.12.1977. After having checked the records of the service of the daily waged employees it transpires that the petitioners have not worked with the respondent. The respondent had already abolished their mechanical construction at Shanan Power House in which the petitioners are claiming to have worked as such there was no question of the compliance of Section 25-F. The experience certificates issued by the various SDOs namely Rastogi, Gandhi, Avtar, Kalsi, Kuldeep Singh, Kamboj, D.K. Siyal have not been issued as per the official record and further per him they were not even competent to issue the same. It is only the Resident Engineer who could have issued them. The purported certificates are stated to be forged and fraudulent. The respondents have also examined the Resident Engineer Shri S.K. Sharma as RW2. His testimony is also on the similar lines as that of RW1. As per this witness he is working as a Resident Engineer with the Board in Shanan since 2004. He does not know when the mechanical construction division Shanan was abolished. He has further stated that it was defunct after two years of the completion of the construction work. He has denied that the records pertaining to the mechanical construction division had been destroyed after the abolition of the division. RW3 Uttam Chand, is a Junior Engineer with the respondent and he has also averred on the same lines. One of the person namely Ghanshyam does not pertain to the division and the petitioners are trying to mislead the Court. However in his cross-examination this witness has categorically admitted that the Ghanshyam mentioned at serial no.14 of the Ex. PW24/A (i.e. muster rolls) and the petitioner Ghanshyam had the same parentage and name.

26. This is but the entire evidence led by the parties in the second round.

27. Initially, too the petitioners had examined themselves as their own witness more particularly PW1 Sh. Riknu Ram PW2, Sh. Kundal Lal, PW3 Puran Chand, PW4 Harnam Singh and PW5 Shiv Lal. They had by and large deposed that their services had been dis-engaged without any notice and retrenchment compensation and nor any domestic inquiry had been held against them. They had placed on record the standing orders of the board to highlight that the board was obligated to follow the provisions of the Industrial Disputes Act in respect of termination of the employees. PW3 Puran Chand had also inter alia deposed that after his termination fresh hands namely Roshan, Bhim Singh and Ram Saran has been issued casual cards by the respondent. The respondent at that time too, had examined one Sita Ram as RW1, one K.K. Guru the Resident Engineer as RW2. The Resident Engineer at that time has deposed that the petitioners never worked with the Resident Engineer in the Shanan division in any year, as per the record. One B.D. Shetty, Officer Personnel, PSEB, Patiala was examined as RW-3. He has deposed that only the Executive Engineer can issue experience certificate and as such any certificate issued by the Junior Officers were not valid.

28. It is further the pleaded case of the respondent that the aforesaid workmen had never worked with the Board. The relationship of an employer and employees was denied. Further per them, the mechanical construction division of the Board at Shanan was a separate identity and the same had been abolished by the PSEB during June, 1992, 1993 and September, 1994 and as such the petitioners claim for re-engagement is not possible due to the abolition of the division.

29. The Id. counsel for the petitioners has thus urged that the petitioners having discharged their initial onus of proving the relationship of an employer and an employee, which has been seriously disputed by the respondent. The onus had been shifted on to the respondents but they failed to rebut the same. The documents and the attending circumstances placed on record by way of additional evidence goes to prove the relationship of a master and a servant inter se the parties. He would further contend that once the workmen claimed and deposed that they had worked for 240 days, the burden of proof would shift to the employer to prove that the workmen had not completed 240 days of continuous service. In this behalf he placed reliance on a recent judgment of the Hon'ble Supreme Court titled as Director, Fisheries Terminal Division vs. Bhikhu Bhai Megha Bhai Chavda, AIR 2010 SC 1236 and Rajender Singh vs. State Warehousing Corporation, AIR 2010 SC 1116. He has further canvassed with vehemence that the respondents have failed to produce any documents to rebut the contentions of the petitioners and the non production of any document i.e. in relation to the petitioner or any other contemporaneous record to deny the averments of the petitioners would give arise to drawing an adverse inference to the effect that had such documents being produced, the same would have gone against their interest. In this behalf too, he has placed reliance upon a judgment of the Hon'ble Supreme Court titled as Sushil Kumar vs. Rakesh Kumar, 2004 (1) SLJ 655 and a judgment of our own Hon'ble High Court titled as State of H.P. vs. Jivan Singh, 1981 SLJ 43.

30. Per contra the Id. counsel for the respondent has also very forcefully contended that the petitioners were never the employees of the respondent board. He further contended that the petitioners have failed to prove the relationship of a master and a servant, as per law. The experience certificates on record have not been duly proved. He has further urged that the failure on the part of the respondent to prove their defence that the petitioners were not employed with them by not placing the relevant documentary evidence will not amount to an admission and nor would it reverse or discharge the burden of proof, which per him was on the petitioners. In this behalf he has placed reliance on the judgment of Hon'ble Supreme Court titled as Manager, Reserve Bank of India, Bangalore vs. S. Mani and others, 2005 (5) SCC 100. He has further placed reliance on the judgment of the Hon'ble Supreme Court titled as Municipal Corporation, Faridabad vs. Siri Niwas, 2004 (8) SCC 195, to contend that since the burden of proof was on the workmen to show that he had worked continuously for 240 days in the preceding 12 months of his termination and the petitioners have miserably failed to adduce any evidence to prove the same. The Id. counsel also laid stress on the ground that the delay in raising the dispute is fatal to the petitioners, but the said aspect has been dealt with in detail while discussing issues no. 2, 3 and 3A.

31. Having considered the entire gamut of the circumstances discussed hereinabove it transpires that the respondents in fact denied the very relationship of an employer and an employee with the aforesaid petitioners. There is a complete denial by the respondents. The petitioners as per them have never worked for them. While in the pleadings the respondents have however hastened to add that their mechanical construction division was abolished in the years 1992, 1993 and 1994. Strangely no record is available with the respondents. Initially one Resident Engineer Sh. K.K. Guru had been examined by the respondent board as RW2 on 5.11.2001. His deposition was simplicitor that the petitioners never worked with the Resident Engineer, Shanan division in any year as per the record. The Shanan Power House was being controlled by the Resident Engineer only. Thereupon the stand of the Board has been that no records whatsoever are available with the Board. So was the testimony of the record keeper of board Sh. Om Prakash who had been summoned as PW22 by the petitioners while leading additional evidence. As per him the records prior to 1986 are not with him. It is not that no records pertaining to the petitioners have been produced, but strangely even no contemporaneous record has been produced, atleast to show that some other workmen had been working in place of the petitioners at the relevant time and place.

32. On the contrary the petitioners have placed on record the experience certificates which have been signed by the Sub Division Officers. Except for a few workmen all of them have placed their experience certificates on record by way of additional evidence. One of the petitioners have also placed on record a copy of his service book mark B1 along with the extract of the register which have been verified by the SDO Shanan, Civil Construction, S/D No.II. PW20 Sant Ram and PW21 Sh. Dagi Ram have identified the signatures of the respective engineers on the experience certificates annexed along with by the petitioners both the witnesses had been working with the respondent board since the year 1968 and 1970 respectively. Per them they have worked with the said engineers and as such identified their signatures.

33. Though the Id. counsel for the respondents would contend that the experience certificates have not been proved as per law and as such have not relevance in the eyes of law. However, by now it is well settled that the provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication. The Tribunal is free to adopt a procedure, so as to conform to the requirements of natural justice. It is free to receive evidence from whatever source if it is "logically probative" and credible.

34. Having gone through the entire testimony of the petitioners and the documents on record, it cannot be said that all the petitioners had fraudulently prepared the experience certificates, as is the case of the respondents. The petitioners have put in service with the respondent from a period varying from 1971 to 1983. There had been

innumerable changes of the Engineers during the said interregnum. The experience certificates have been issued by different engineers and at different times. It is therefore difficult to comprehend that the workmen would have manufacture forged documents in respect of all of them. Moreover no rebuttal has been led to prove to the contrary. The signatures of the engineers have been duly validated by the PW20 and PW21, if nothing else. It is again difficult to believe that an instrumentality of a State does not have any record for a period ranging from 1971 to 1983. The evidence placed on record does seem to be "logically probative" and credible.

35. Furthermore the entire oral and documentary evidence on record does go to show that the petitioners have discharged the initial onus of at least proving the relationship of an employer and an employee inter se the parties and seeing to the ratio laid down by the Hon'ble Supreme Court in Bhikhu Bhai Meghaji Bhai Chavda (AIR 2010 SC 1236), as discussed hereinabove supra in fact even the workmen had discharged their initial onus by deposing that they had worked for 240 days and thereupon the burden of proof had shifted on the employer to prove to the contrary. Nothing on this score has been placed on record by the respondent.

36. Even if the alternative plea of the respondent is taken into consideration i.e. their mechanical construction division had been abolished in June, 1992, 1993 and September, 1994, and as such the petitioners claim for reengagement was not possible due to the abolition of the division. Even assuming that was so, the respondent board was to first and foremost resort to the provisions of Section 25-N and 25-O of the Industrial Disputes Act, 1947 i.e. the respondent had to take prior permission of the appropriate Govt. before the closure of the division and even before dispensing with the services of the workmen employed therein. Apparently no such steps were taken by the respondent Board. They have no records with them. It has either been weeded out or destroyed, though none in the witness box has deposed on the aforesaid lines.

37. Even if no adverse inference is drawn on account of the respondents having failed to produce any record, the discussion hereinabove goads me to infer that the petitioners did work with the respondent Board. Admittedly they have worked for different periods of time. Having discharged their initial onus by deposing that they had completed 240 days and the respondent having failed to rebut the same it can further be inferred that the petitioners had even completed 240 days in the 12 calendar months preceding their termination. Over and apart, if nothing else the respondent board had flagrantly validated the provisions of Section 25-N and 25-O before closing down the mechanical construction division at Shanan. The acts of the respondent were not in consonance with the statutory provisions of the Industrial Disputes Act.

38. The action of the respondent Board in disengaging the petitioners was against the mandate of Section 25-F. Admittedly no steps as per the requirements of Section 25-F were taken by the respondents as the respondents having denied the very relationship of a master and a servant. Thus certainly no steps would and could have been taken to terminate their services.

39. In normal circumstances this Court would have ordered the reengagement of the petitioners. However seeing to the peculiar facts and circumstances of the case more particularly the dates of appointment and disengagement of all the workmen being different. They were engaged in different years varying from 1971 till 1977 and 1978 and had also come to be terminated on different points of time between the year 1982 to 1984 and the reference being also joint, the individual cause of action having become mirrored in uncertainty and the dispute also having come to be raised after substantial delay of time, the remedy may have died, but not the rights of the party. The right did fade but did not die into oblivion with the passage of time. In those circumstances rather than ordering their re-engagement I deem it just and proper to order payment of compensation to the petitioners/workmen. As a sequel thereto the respondent Board shall pay an amount of Rs.1,00,000/- as compensation to all the petitioners/workmen.

RELIEF

40. For all the aforesaid reasons discussed above the reference is partly allowed. The action of the respondent Board in disengaging the services of the petitioners is held to be violative of Section 25-F of the Industrial Disputes Act. However rather than ordering their re-engagement the respondent is directed to pay an amount of Rs.1,00,000/- as compensation to all the workmen/petitioners. The amount shall be paid within two months of the passing of the award, failing which the respondent Board shall pay interest at the rate of 9% from the date of award till its realization thereof. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of September, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 36/2006

Instituted on : 20.3.2006

Decided on : 6.10.2010.

Shri Heera Lal S/o Shri Goverdhan, R/o Village Kehar, P.O. Rajgarh, Tehsil Sadar, District Mandi, H.P.

...Petitioner

Versus

The Divisional Forest Officer, Suket Forest Division Sunder Nagar, District Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether the termination of services of Shri Heera Lal S/o Shri Goverdhan workman by the Divisional Forest Officer, Forest Div., Sundernagar, Distt. Mandi, H.P. w.e.f. 1.6.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The short and simple case set up by the petitioner is that he was engaged as a beldar by the respondent on 1.1.1997 and he continued to work as such till 30.6.2000. His services came to be terminated verbally without any notice, though he had completed 240 days in the preceding 12 months of his termination.

3. It is further the case of the petitioner that the respondents had retained persons junior to him in service namely Jeewan S/o Sh. Brikam, Jai Ram S/o Shri Dyalu, Sunder S/o Shri Heera, Lal Chand S/o Shri Dhanua, Mohan Lal S/o Shri Panjku, Hem Singh S/o Shri Narad and others. The respondent had thus violated the mandatory provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

4. The petitioner had initially approached the Hon'ble Administrative Tribunal by filing an original application, which was however dismissed for want of jurisdiction in the year 2002. It is only thereupon that the petitioner had raised an industrial dispute and hence the present reference.

5. The petitioner thus prays that his termination be set aside and he be reinstated with all consequential benefits.

6. While contesting the claim the respondent averred that the petitioner was engaged as a daily waged mazdoor in February, 1995. He had worked till June 2000 and had completed 240 days upto the year 1999. The yearwise mandays chart has been enclosed along with. Due to non availability of work and funds the petitioner had issued a notice dated 2.8.2000. It is further the case of the respondent that the petitioner had absented himself willfully since June, 2000. The petitioner thus had never been illegally terminated. It is denied that the respondents violated the provisions of Section 25-F of the Act.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 7.11.2007 the following issues came to be framed by my Id. predecessor:

1. Whether the dis-engagement from the service of the claimant by the respondent is proper and justified? . . .OPP
2. If the above issue is proved in the affirmative to what service benefit to the claimant is entitled to? . . .OPP
3. Relief.

9. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue-wise findings may be returned thus:-

Issue No. 1 : No

Issue No.2 : As per operative part of the award Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS**ISSUES No.1 and 2**

10. Both the issues are being taken up together for discussion as they are co-related and intermingled.

11. The respondents have placed on record the mandays chart of the petitioner vide Ex. RW1/B. Though as per them the petitioner had completed 240 days in the year 1999 but he had not completed the requisite period in the year 2000. The mandays have been calculated by the respondents as per the 12 months in a calendar year. If we count the working days in the preceding 12 months of his alleged termination i.e. June, 2000, it however transpire that the petitioner had completed 240 days in the preceding 12 months of his termination. What is further apparent from the mandays chart is that since the year 1995 till the year 2000 the petitioner had invariably completed more than 240 days even in each calendar year.

12. It is thus apparent that the respondents had to take resort to the provisions of Section 25-F, which reads thus:-

“25-F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

13. Admittedly no recourse had been taken to the aforesaid provisions by the respondent. The reference pertains to the termination of the petitioner w.e.f. 1.6.2000. The respondents have though set up the plea of abandonment and simultaneously that his services were dispensed with for want of sufficiency of funds and work on 2.8.2000. Purportedly notice was issued to the petitioner vide Ex. RW1/C. Even if Ex. RW1/C is to be believed, suffice to say, it is not in accordance with the provisions of Section 25-F. It cannot thus be termed to be a notice as contemplated under law. More intriguingly it is itself the case of the respondent that the petitioner had himself abandoned job. If it was so and the petitioner had already abandoned job in June, 2000 there was no necessity of having issued the alleged notice vide Ex. RW1/C in August, 2000.

14. The respondent in order to prove their plea of abandonment have led no evidence worth the name to remotely show that the petitioner had abandoned job. It is a specific case of the respondent. However the same had not been proved by the respondent on record. Even the said contention of the respondent thus deserves to be negated. There is no document on record to show that any notice was issued to the petitioner to explain his willful absence or to report for duty, failing which his services would be terminated. The petitioner had further averred that certain juniors to the petitioner had been retained by the respondents thereby contravening the provisions of Section 25-G of the Act. There is no specific denial on this count and nor has any evidence been led to dispute the said factum.

15. For all the reasons discussed above it is held that the petitioner had completed 240 days in the preceding 12 months of his termination. He was entitled to the statutory notice envisaged under Section 25-F of the Act and any contravention of the same is illegal and unlawful. Consequently the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged. He shall also be entitled to the benefit of continuity of service from the date of his disengagement. Since the petitioner has failed to discharge the initial onus of proving that he was not gainfully employed during the said interregnum, he is not entitled to any back-wages.

RELIEF

16. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. The respondent is directed to reengage the petitioner forthwith along with seniority and continuity in service from the date of his termination, though except back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
 CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 40/2006
Instituted on : 20.3.2006
Decided on : 17.7.2010.

1. Shri Het Ram S/o Shri Badaria Ram, R/o Village Fafna, P.O. Rakol, Tehsil Sundernagar, District Mandi, H.P.
2. Shri Krishan Lal S/o Shri Sant Ram, R/o Village Kole, P.O. Balag, Tehsil Sundernagar, District Mandi, H.P.
3. Sh. Asha Ram S/o Shri Lachhi Ram, R/o Village Chauri, P.O. Balag, Tehsil Sundernagar, District Mandi, H.P.
4. Shri Chet Ram S/o Shri Prem Singh, R/o Village Kole, P.O. Balag, Tehsil Sundernagar, District Mandi, H.P.
5. Shri Jitender Singh S/o Shri Vidya Sagar, R/o Village Paobo, P.O. Balag, Tehsil Sundernagar, District Mandi, H.P.
6. Shri Dalip Singh S/o Shri Balak Ram, R/o Village Kole, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P.

...Petitioners

Versus

The Divisional Forest Officer, Suket, Forest Division Suket, Tehsil Sundernagar, District Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether the termination of services of No.1. Sh. Het Ram S/o Sh. Badari Ram, No.2. Sh. Krishan Lal S/o Sh. Sant Ram, No.3. Sh. Asha Ram S/o Sh. Lachhi Ram, No.4. Sh. Chet Ram S/o Shri Prem Singh, No.5. Sh. Jitender Kumar S/o Sh. Vidya Sagar and No.6. Sh. Dalip Kumar S/o Sh. Balak Ram, workmen by the Divisional Forest Officer, Forest Division Suket at Sundernagar, District Mandi, H.P. w.e.f. 17.7.2003 as alleged by the workmen without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workmen are entitled to?

2. The petitioners in furtherance of their claim have submitted that they were appointed on daily wages as a beldars w.e.f. 13.5.1998. All the petitioners have worked continuously without any break till 16.7.2003. On 17.7.2003 when the petitioners reported for duty they were told that their services are no more required. Their services came to be dis-engaged there and then, verbally and without any notice.

3. The respondent even failed to abide by the compromise memo dated 15.9.2003 prepared before the Labour Officer, Mandi. It is further averred that the names of the petitioners figure at serial nos. 178 to 180 and 182 to 184 of the seniority list of daily wagers as it existed on 31.3.2001 and the workers reflected at serial nos. 185 to 211 in the seniority list who were juniors to the petitioners had been continued by the respondent and as such the termination of the petitioners were also against the settled principle of ‘last come first go’. The petitioners thus claim reinstatement along with all consequential benefits.

4. While contesting the claim the respondent raised the preliminary objections vis-à-vis the reference being time barred and bad for mis-joinder and non-joinder of parties.

5. On merits it is not denied that the petitioners were not engaged in May, 1998. Per the respondent they were allowed to continue as casual workers till availability of work and funds. The petitioners had completed 240 days in each calendar year except the year 2000. The dis-engagement of the petitioners was due to paucity of funds and non-availability of work. It was neither intentional nor deliberate. It was denied that the respondent was not abiding by the compromise memo dated 15.9.2003. Per the respondent it was being implemented in letter and spirit. The workmen were being engaged as per their seniority, though subject to availability of work and funds. It was denied that the junior persons to the petitioners had been retained by the respondent.

6. It is further averred by the respondent that the petitioners were engaged as daily rated mazdoor on seasonal forestry works and were dis-engaged on completion of work. Therefore, the action taken by the respondent department is not illegal and violative of the provisions of the Industrial Disputes Act (hereinafter referred to as the Act) and as such no notice required to be served upon the petitioners as they were aware of the completion of work on a definite date of their dis-engagement.

7. While filing rejoinder the contentions raised in the reply were denied and those in the statement of claim were reiterated by the petitioners.

8. I notice that on 8.4.2009 the following issues came to be framed by my ld. predecessor:

1. Whether the termination of services of the petitioners by the respondent is unlawful. If so, what relief the petitioners are entitled to? . . .OPP
2. Whether the petitioners were engaged as daily waged labourers for seasonal forestry works and dis-engaged on completion of the work. . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . .OPR
4. Whether the claim petition is not maintainable. . . .OPR
5. Relief.

9. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue wise findings may be returned thus:-

Issue No. 1 : Yes

Issue No. 2 : No

Issue No.3 : No

Issue No.4 : No

Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

10. Both the issues are being taken up together for discussion as they are co-related and intermingled.

11. Apparently it is not disputed that the petitioners had been working with the respondent as a daily rated worker. From the pleadings and evidence on record it further emerges that even now the petitioners are working with the respondent department and they are called for work as and when budget is said to be available with the respondent. It is however the case of the respondent that the petitioners are seasonal workers and are dis-engaged on completion of specific forestry works and lack of funds.

12. The petitioners have appeared as their own witnesses as PW1 to PW6. They have reiterated the stand taken in the pleadings, which is factually not disputed by the respondent. It also emerges from their cross-examination that they are still being re-engaged intermittently by the respondent.

13. The respondent has however raised a plea that the petitioners were engaged as a daily rated mazdoor on seasonal forestry work and were disengaged on completion of the work. To substantiate the aforesaid plea the respondent has examined the Divisional Forest Officer who has appeared as RW1. He has tendered his evidence by way of affidavit along with the mandays chart of the petitioners' exhibits Ex.RW1/B to Ex. RW1/G. The Divisional Forest Officer while appearing as RW1 has reiterated that the petitioners were dis-engaged due to paucity of funds and non-availability of work. That the compromise memo effected inter-se the parties was being implemented in the letter and spirit and the petitioners and other workmen were being provided work as and when it was available along with funds.

14. However nothing has been placed on record by the respondent to remotely show that the petitioners had been engaged for seasonal forestry work and more so for some specific work. The mandays of the petitioners themselves which has been placed on record Ex. RW1/B to Ex. RW1/G show that invariably all the petitioners have completed more than 200 working days from the year 1999 till 2002. In fact all the petitioners have completed more than 200 days even in the preceding 12 months of their termination, (as per the mandays supplied by the respondent). Thus the plea of seasonal work is demolished by the respondent themselves. There is nothing on record to show that the petitioners had been engaged for some specific forestry work. No appointment letters have been placed on record to show that the petitioners had been appointed against some specific forestry work. The plea of the respondent that the engagement of the petitioners was to come to an end automatically on the completion of work on the definite date of their dis-engagement cannot thus be believed. It has to be rejected. The contention of the respondent that for the aforesaid reason, no notices were required to be issued to the petitioners is also fallacious and not worth of any credence.

15. The petitioners on the other hand placed on record the seniority list Ex. P1 and Ex. P. Ex. P1 is the seniority list as it stood on 31.12.2006 while Ex. P2 is the seniority list as it stood on 31.3.2001. The perusal of the two seniority lists show that the respondent has engaged workmen till the year 2000 and all of them have completed more than 240 days. The petitioners were appointed in January, 1999 as is clear from the seniority list while the other workmen have been appointed subsequently starting from April, 1999. The process continued unabated till April, 2000. Thus what is inferable from the documents on record is that the respondent had sufficient work and funds at their disposal. Not only this the respondents were even engaging fresh hands after the dis-engagement of the petitioners and that too for more than 240 days. The plea of the respondent having only seasonal work also stands demolished. So much so the respondent had been engaging fresh hands, oblivious of the provisions of Section 25-G and 25-H of the Act. The respondent as per the evidence on record have re-engaged even the petitioners as and when work and funds were available, i.e. at the sole discretion of the powers to be. Workmen like the petitioners were thrown off the roll while persons junior to them have continued working with the respondent and that too for more than 240 days in each calendar years. Apart from being an unfair labour practice the whole approach of the respondent was not only discriminatory but against the settled provisions of Section 25-G of the Act. It is by now well settled, which is though not in the knowledge of the respondent that for the applicability of the provisions of Section 25-G the requirement of having 240 days continuously in a calendar year is not a condition precedent as per ratio laid down by the Hon'ble Supreme Court reported in Central Bank of India vs. S. Satayam, (1996 5 SCC 419). It has been held that the applicability of the principle of 'last come first go' contained in Section 25-G is not only confined to workmen who were in "continuous service" for one year and above but to all retrenched workmen. Thus the respondent even while resorting to the provisions of Section 25-G had to give preference to the petitioners even if they had not completed 240 days. Atleast to those workmen who were appointed from 1999 to the year 2000. The plea of the respondent that no juniors to the petitioners have been retained thus cannot be sustained. Consequently the action of the respondent in dis-engaging the petitioners in violation of the provisions of Section 25-G is illegal. The respondent has failed to abide by the principle of 'last come first go'. The services of the some of the employees junior to the petitioners were continued, while the petitioners were shown the door. The principle enshrined under Section 25-G of the Act was thus not followed. The seniority lists on record belie very assertions of the respondent. Consequently it is held that the termination of the petitioners was unlawful and illegal. Though as per evidence the petitioners are being engaged intermittently, henceforth the respondent is directed to engage them continuously as per their juniors reflected in the seniority list as it stood on 31.3.2001. They should be entitled to the seniority as has been granted to the persons junior to them starting serial no. 185 in the seniority list of daily wagers as existed on 31.3.2001 w.e.f. their illegal termination. They shall be entitled to seniority and continuity from the day it has been granted to their juniors i.e. w.e.f. in the year 1999. In the peculiar circumstances of the case, more so seeing to the fact the petitioners were being employed intermittently I do not deem it just and proper to award any back-wages to the petitioners. Both the issues are accordingly decided.

ISSUE NO. 3

16. Nothing has been brought to my notice, as to why the petition is suffers from the vice of delay and laches. The dispute is in existence since the year 2003 itself and it is not even disputed by the respondent. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.4

17. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

18. For all the reasons discussed above, the reference is allowed. The respondent is directed to re-engage the petitioners forthwith continuously as per their juniors. They shall be entitled to seniority and continuity from the day which has been granted to their juniors i.e. w.e.f. the year 1999, though except backwages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 17th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 174/2006
Instituted on : 4.12.2006
Decided on : 19.7.2010.

1. Shri Het Ram S/o Shri Puran Chand, Shri Babu Ram s/o Shri Moti Ram and Shri Nant Ram S/o Shri Nariya Ram C/o Shri Sunder Singh Sippy (AR) House No.100/3, Roura Sector No.2, District BIlaspur, H.P.
 ...Petitioners

Versus

The Divisional Forest Officer, Suket, Forest Division, Sunder Nagar, District Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy , AR
 For the Respondent : Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether the action of the Divisional Forest Officer, Suket Forest Division Sunder Nagar, District Mandi, H.P. to give break in service to Shri Het Ram S/o Shri Puran Chand, Shri Babu Ram S/o Shri Moti Ram and Shri Nant Ram S/o Shri Nariya Ram workmen during their service period time and again and finally terminated w.e.f. 7.4.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workmen are entitled to?”

2. The petitioners in furtherance their claim have submitted that Het Ram was appointed on daily wages as a beldars w.e.f. 1.3.1994 and other two namely Babu Ram and Nant Ram were appointed on 1.4.1998. All the petitioners have worked continuously without any break till 7.4.2003. Their services came to be dis-engaged there and then, verbally and without any notice.

3. The respondent even failed to abide the compromise memo dated 15.9.2003 prepared before the Labour Officer, Mandi. It is further averred that many workmen who were juniors to the petitioners like Chuni Lal, Jai Kumar, Ashwani Kumar and others named in the statement of claim had been continued by the respondent and as such the termination of the petitioners were also against the provisions of Section 25-B, 25-H, 25-F and 25-G of the Industrial Disputes Act (hereinafter referred to as the Act). The petitioners thus claim reinstatement along with consequential benefits.

4. While contesting the claim the respondent raised a preliminary objections that the petitioners were engaged as daily waged mazdoors on seasonal forestry work in Kangu Range keeping in view the availability of work and funds and as such their services were dis-engaged on completion of work and the provisions of Industrial Disputes Act was not violated and that exists no labour dispute.

5. On merits the petitioners were said to have been engaged only in 1999. Per the respondent they were allowed to continue till availability of work and funds as casual workers and worked intermittently till March, 2003.

The petitioners had not completed 240 days in each calendar year. The disengagement of the petitioners was due to paucity of funds and non-availability of work. It was neither intentional nor deliberate. It was denied that the respondent was not abiding the compromise memo dated 15.9.2003. Per the respondent it was being implemented letter and spirit. The workmen being engaged as per their seniority, though subject to availability of work and funds. It was denied that the junior persons to the petitioners had been retained by the respondent. No juniors were stated to have been engaged or retained by the department in Kangu Range.

6. It is further averred by the respondent that the petitioners were engaged as daily rated mazdoor on seasonal forestry works and were dis-engaged on completion of work. Therefore, the action taken by the respondent department is not illegal and violative of the provisions of the Industrial Disputes Act and as such no notice required to be served upon the petitioners as they were aware of the completion of work on a definite date of their dis-engagement.

7. While filing rejoinder the contentions raised in the reply were denied and those in the statement of claim were reiterated by the petitioners.

8. I notice that on 6.10.2007 the following issues came to be framed by my Id. predecessor:

1. Whether the dis-engagement from service of claimant by the respondent is proper and justified? .
 .OPR
2. If issue no.1 is proved in affirmative, to what service benefits the petitioners are entitled to?
 . .OPP
3. Whether the claimant was engaged against specific work on cessation of service an automatically end? If so its effect.
 . .OPR
4. Relief.

9. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue-wise findings may be returned thus:-

Issue No. 1 :	No
Issue No. 2 :	As per operative part of the award.
Issue No.3 :	No
Relief :	Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1,2 and 3

10. All the three issues are being taken up together for discussion as they are co-related and intermingled.

11. Apparently it is not disputed that the petitioners had been working with the respondent as a daily rated worker. From the pleadings and evidence on record it further emerges that even now the petitioners are working with the respondent department and they are called for work as and when budget is said to be available with the respondent. It is however the case of the respondent that the petitioners are seasonal workers and are dis-engaged on completion of specific forestry works and lack of funds.

12. The petitioners have appeared as their own witnesses as PW1 to PW3. They have reiterated the stand taken in the pleadings, which is factually not disputed by the respondent. It also emerges from their cross-examination that they are still being re-engaged intermittently by the respondent.

13. The respondent has however raised a plea that the petitioners were engaged as a daily rated mazdoor on seasonal forestry work and were disengaged on completion of the work. To substantiate the aforesaid plea the respondent has examined the Divisional Forest Officer who has appeared as RW1. He has tendered his evidence by way of affidavit along with the mandays chart of the petitioners' exhibits Ex.RW1/B to Ex. RW1/C. The Divisional Forest Officer while appearing as RW1 has reiterated that the petitioners were dis-engaged due to paucity of funds and non-availability of work. That the compromise memo effected inter-se the parties was being implemented in the letter and spirit and the petitioners and other workmen were being provided work as and when it was available along with funds.

14. However nothing has been placed on record by the respondent to remotely show that the petitioners had been engaged for seasonal forestry work and more so for some specific work. The mandays of the petitioners themselves which has been placed on record Ex. RW1/B to Ex. RW1/C show that invariably all the petitioners have completed more than 200 working days from the year 1999 till 2003. In fact all the petitioners have completed more

than 200 days even in the preceding 12 months of their termination, (as per the mandays supplied by the respondent). Thus the plea of seasonal work is demolished by the respondent themselves. There is nothing on record to show that the petitioners had been engaged for some specific forestry work. No appointment letters have been placed on record to show that the petitioners had been appointed against some specific forestry work. The plea of the respondent that the engagement of the petitioners was to come to an end automatically on the completion of work on the definite date of their dis-engagement cannot thus be believed. It has to be rejected. The contention of the respondent that for the aforesaid reason, no notices were required to be issued to the petitioners is also fallacious and not worth of any credence.

15. The petitioners on the other hand placed on record the seniority list Ex. PW3/B and Ex. P□II/B. Ex. Both the seniority list as it stood on 31.12.2003. The perusal of the two seniority lists show that the respondent has engaged workmen till the year 2002 and all of them have completed more than 240 days. The petitioners were appointed in January, 1999 as is clear from the seniority list while the other workmen have been appointed subsequently starting from 1999. The process continued unabated till 2002. Thus what is inferable from the documents on record is that the respondent had sufficient work and funds at their disposal. No only this the respondents were even engaging fresh hands after the dis-engagement of the petitioners and that too for more than 240 days. The plea of the respondent having only seasonal work also stands demolished. So much so the respondent had been engaging fresh hands, oblivious of the provisions of Section 25-G and 25-H of the Act. The respondent as per the evidence on record have re-engaged even the petitioners as and when work and funds i.e. at the sole discretion of the powers to be. Workmen like the petitioners were thrown off the roll while persons junior to them have continued working with the respondent and that too for more than 240 days in each calendar years. Apart from being an unfair labour practice the whole approach of the respondent was not only discriminatory but against the settled provisions of Section 25-G of the Act. It is by now well settled, which is though not in the knowledge of the respondent that for the applicability of the provisions of Section 25-G the requirement of having 240 days continuously in a calendar year is not a condition precedent as per ratio laid down by the Hon'ble Supreme Court reported in Central Bank of India vs. S. Satayam, (1996 5 SCC 419). It has been held that the applicability of the principle of 'last come first go' contained in Section 25-G is not only confined to workmen who were in "continuous service" for one year and above but to all retrenched workmen. Thus the respondent even while resorting to the provisions of Section 25-G had to give preference to the petitioners even if they had not completed 240 days. Atleast to those workmen who were appointed from 1999 to the year 2000. The plea of the respondent that no juniors to the petitioners have been retained thus cannot be sustained. Consequently the action of the respondent dis-engaging the petitioners in violation of the provisions of Section 25-G is illegal. The respondent has failed to abide by the principle of 'last come first go'. The services of the some of the employees junior to the petitioners were continued, while the petitioners were shown the door. The principle enshrined under Section 25-G of the Act was thus not followed. The seniority lists on record belies the very assertions of the respondent. Consequently it is held that the termination of the petitioners was unlawful and illegal. Though as per evidence the petitioners are being engaged intermittently, henceforth the respondent is directed to engage them continuously as per their similar situate workmen. They should be entitled to the seniority as has been granted to the persons junior to them i.e. after the year 1999. They shall be entitled to seniority and continuity from the day it has been granted to their juniors i.e. w.e.f. from the year 1999. In the peculiar circumstances of the case, more so seeing to the fact the petitioners were being employed intermittently I do not deem just and proper to be awarded any backwages to the petitioners. Both the issues are accordingly decided.

RELIEF

16. For all the reasons discussed above, the reference is allowed. The respondent is directed to re-engage the petitioners forthwith continuously as per their juniors who are continuing as such since the year 1999. They shall be entitled to seniority and continuity from the day which has been granted to their juniors i.e. w.e.f. the year 1999, though except back-wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 19th day of July, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**In the Court of Shri Layak Ram Negi, Sub-Divisional Magistrate Shimla(R), District Shimla,
Himachal Pradesh**

Shri Suraj Pal s/o Late Shri Devi Ram, r/o Pateud, P. O. Anandpur, Tehsil and Distt. Shimla
(H. P.) *..Applicant.*

Versus

General Public *..Respondent.*

Whereas Shri Suraj Pal s/o Late Shri Devi Ram, r/o Pateud, P. O. Anandpur, Tehsil and Distt. Shimla has filed an application along with an affidavit in the court of undersigned under section 13 of the Births and Deaths Registration Act, 1969 to enter his name Suraj Sharma instead of Suraj Pal in the Parivar Register in Gram Panchayat Anandpur has stated no objection to register the name of the applicant vide resolution No. 3 dated 19-3-2011 .

Sl. No.	Name of the family members	Relation	Date of death
1.	Suraj Pal Alias Suraj Sharma	s/o Late Shri Devi Ram, r/o Pateud, G. P. Anandpur.	1968

Hence, this proclamation is issued to the general public if they have any objection/claim regarding registration of names of the applicant may file their claim/objection on or before one month of publication of this notice in Government Gazette in this court, failing which necessary orders will be passed.

Given today 10th March, 2011 under my signature and seal of the court.

Seal.

LAYAK RAM NEGI,
*Sub-Divisional Magistrate Shimla(R),
District Shimla, Himachal Pradesh.*